

EXHIBIT B

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION,
GENERAL EQUITY PART
ESSEX COUNTY
DOCKET NO. ESX-C-000248-16
APP. DIV. NO. _____

SCOTT PHILLIPS,	:	
	:	
Plaintiff,	:	TRANSCRIPT
	:	
v.	:	OF
	:	
ARCHDIOCESE OF NEWARK and	:	DECISION OF THE COURT
ST. THERESA'S SCHOOL,	:	
	:	
Defendants.	:	

Place: Wilentz Justice Complex
212 Washington Street
Newark, NJ 07102

Date: August 14, 2017

BEFORE:

HONORABLE DONALD A. KESSLER, J.S.C.

TRANSCRIPT ORDERED BY:

CHRISTOPHER H. WESTRICK, ESQUIRE (Carella, Byrne,
Cecchi, Olstein, Brody & Agnello, P.C.)

APPEARANCES:

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I N D E X

<u>BY THE COURT:</u>	<u>PAGE</u>
Findings of Fact & Conclusions of Law.. . . .	3

3

1 (Trial commenced at 1:51 p.m.)
 2 THE COURT: Please be seated.
 3 Okay. This is the matter of Phillips versus
 4 The Archdiocese of Newark.
 5 Counsel, your appearances for the record?
 6 MS. MCCREA: Good afternoon, Your Honor.
 7 Susan McCrea on behalf of plaintiff.
 8 MR. WESTRICK: Good afternoon, Your Honor.
 9 Christopher Westrick and John Kelly from Carella Byrne
 10 on behalf of defendants.
 11 THE COURT: Okay. Everyone can be seated.
 12 Okay. The Court is going to deliver its
 13 opinion now. It is my hope that I won't have to step
 14 off the bench for a break, but it's possible I may.
 15 We'll see how it goes.
 16 Okay. For the purpose of my decision, the
 17 pertinent facts are, as follows:
 18 Saint Theresa's R.C. Church is a New Jersey
 19 religious corporation, incorporated under Title 16 of
 20 the New Jersey Statutes and it is located at 541
 21 Washington Avenue, Kenilworth, New Jersey. Saint
 22 Theresa's operates as a catholic parish, fulfilling
 23 the spiritual needs of parishioners. Saint Theresa's
 24 was formed exclusively for religious, charitable and
 25 educational purposes.

4

1 Saint Theresa's operates a religious school,
 2 STS -- Saint Theresa's School, which will be referred
 3 to as STS -- which educates primary school children
 4 with respect to their academic and spiritual
 5 educational needs. STS educates children from
 6 kindergarten through 8th grade, and also operates a
 7 preschool program.
 8 The Roman Catholic Archdiocese of Newark is
 9 a not-for-profit corporation comprised of parishes,
 10 schools and other related entities operating in Essex,
 11 Bergen, Hudson and Union Counties. The Archdiocese
 12 was formed exclusively for religious, charitable and
 13 educational purposes. Saint Theresa's Church and its
 14 operations, including STS, are governed by the
 15 Archdiocese of Newark. The Archdiocese of Newark
 16 provides pastoral services for approximately 1.3 to
 17 1.6 million parishioners.
 18 Plaintiff Scott Phillips, his wife Theresa
 19 Mullen, their two children, S.P. -- two daughters,
 20 S.P. and K.P., and son, B.P., are parishioners of
 21 Saint Theresa's parish. Mr. Phillips and his wife
 22 have been parishioners at Saint Theresa's for 17
 23 years. They have -- their three children -- B.P., age
 24 15; S.P., age 13; and K.P., age 11 -- have all
 25 attended primary elementary school at SPS -- I'm sorry

1 -- STS from preschool through their entire elementary
 2 school education. B.P. now attends Seton Hall Prep.
 3 S.P. has completed the 7th grade and K.P. has
 4 completed the 5th grade last June.

5 Mr. Phillips and Ms. Mullen were married 17
 6 years ago at Saint Theresa's. They have been active
 7 members of the parish regularly attending services and
 8 having developed a personal relationship with a
 9 recently-retired pastor, Father Joe Bejgrowicz.

10 The Phillips children were baptized at the
 11 church and have volunteered to be altar servers
 12 throughout the years. S.P. and K.P. have a number of
 13 friends, relationships with teachers, and a
 14 comfortable familiarity with Saint Theresa's School.
 15 They have volunteered to participate in many school
 16 activities. In S.P.'s case, she has been elected
 17 student council treasurer and has played on sports
 18 teams in the CYO league with other STS children in
 19 sports, such as basketball, volleyball and softball.

20 On December 2, 2016, plaintiff Scott
 21 Phillips, on behalf of his daughter, S.P., and his
 22 son, B.P., filed a complaint before this Court
 23 alleging several claims against the defendants. The
 24 complaint alleges bullying and harassment of S.P.,
 25 failure by STS administrators to address sexually

1 inappropriate behavior, threat of violence with a
 2 knife, exclusion of S.P. and another child at a school
 3 sponsored trunk-or-treat event, and victimization of
 4 S.P.

5 Plaintiff's complaint also alleges that his
 6 son, B.P., was an outstanding student at STS. He
 7 claims his son was in the running to become
 8 valedictorian of his class. Both Mr. Phillips and his
 9 wife, Ms. Mullen, testified at trial that B.P.
 10 received a subjective grade from S.P.'s home room
 11 teacher, the lowest grade he received during his
 12 education at STS. They claim the grade was lowered,
 13 because S.P. was mistreated and bullied by the
 14 teacher. They complained that the grade by S.P.'s
 15 biased home room teacher affected B.P.'s ability to
 16 become valedictorian and, therefore, he became the
 17 salutatorian, rather than the valedictorian of his
 18 class. Ms. Mullen testified that she sought a
 19 justification of this grade so she could explain these
 20 circumstances to B.P., but never got a satisfactory
 21 response.

22 Plaintiff's complaint further alleges that,
 23 beginning in early 2016, S.T. [sic] made numerous
 24 complaints to her home room teacher about
 25 inappropriate sexual behavior and harassing behavior

1 taking place in the classroom. According to plaintiff
 2 and Ms. Mullen, S.P. was thwarted for a period of time
 3 by her home room teacher from reported this behavior.
 4 Somewhat later, another teacher allowed S.P. to report
 5 her complaint about the sexual and harassing
 6 misconduct to the principal. Plaintiff claims that
 7 S.P. continued to report ongoing inappropriate
 8 behavior, principally by other male students, and
 9 claims that she was taunted by STS personnel, parents
 10 and other students.

11 Plaintiff and Ms. Mullen also testified at
 12 one point S.P. was threatened with a weapon and shown
 13 a picture of a non-STS student holding a gun.
 14 Plaintiff and Ms. Mullen also reported that they
 15 believed that she was taunted by another STS parent
 16 and excluded from participating in the school -- STS
 17 parents' school sponsored trunk-or-treat event at one
 18 of the car locations for that event.

19 Mr. Phillips and Ms. Mullen claimed during
 20 their testimony that SPS -- that S.P. was re-victimized
 21 by STS and Archdiocese personnel, who did nothing to
 22 respond to her complaints. At trial, Mr. Phillips and
 23 Ms. Mullen testified they went to Saint Theresa's
 24 School on a number of occasions to address the
 25 improper conduct and the actions against their children

1 at the school.

2 Ms. Mullen testified that she obtained --
 3 attempted to obtain resolution of her concerns from
 4 STS administrators. After her perceived failure of
 5 school administrators to address these concerns, she
 6 worked her way up the chain of Archdiocese personnel
 7 to address her concerns and have them appropriate --
 8 appropriately remedied. She testified that she wrote,
 9 had meetings, and/or telephone conversations with the
 10 Archdiocese superintendent of school, Dr. Margaret
 11 Dames, and the assistant superintendent overseeing STS
 12 school, Sister Patricia Butler. She also wrote to
 13 Cardinal Tobin, the archbishop of Newark, to seek his
 14 aid in addressing her concerns.

15 Plaintiff claims that defendants, through
 16 their authorized representatives, engaged in a pattern
 17 of retaliatory activity as a result of efforts by S.P.
 18 and her parents to protect S.P. in school and from
 19 abuse by teachers and other parents. They further
 20 believe that appropriate steps had not been taken to
 21 address their concerns which affected S.P.'s
 22 education, as well as the education of their other
 23 children.

24 The Archdiocese operates a CYO basketball
 25 league. The league has over 100 teams and 1,000

1 participants in separate boys and girls leagues for
 2 the 2016-2017 season. At the beginning of the season,
 3 an insufficient number of girls volunteered to play on
 4 the girls' basketball team in S.P.'s age group.
 5 Therefore, STS was unable to field a girls' team in
 6 that age group for the CYO league.

7 Ms. Mullen requested the league officials
 8 allow S.P. to play on the boys' team in her age group,
 9 since there was no girls' team in that age group. She
 10 also requested, based on seniority as a coach, that
 11 she be appointed head coach of the boys' team and that
 12 the team's coach assume the role of assistant coach.
 13 Her request was denied by Richard Donovan, the
 14 administrator of the league. Plaintiff and Ms. Mullen
 15 asked other Archdiocese representatives to reverse Mr.
 16 Donovan's decision, but they refused.

17 Plaintiff and Ms. Mullen testified that the
 18 decision to exclude S.P. from the basketball team was
 19 also retaliation for their complaints and S.P.'s
 20 complaint about the bullying and harassing behavior
 21 she experienced. They also argue that S.P.'s exclusion
 22 from the boys' basketball team was discriminatory and
 23 was not prohibited by league rules.

24 At the time that the complaint was filed,
 25 December 2, 2016, plaintiff sought an interlocutory

1 injunction allowing defendants -- compelling
 2 defendants to allow S.P. to play on the STS CYO boys
 3 basketball team. The complaint also sought removal of
 4 unspecified personnel, damages and recision of federal
 5 funding of Saint Theresa's sports program if such
 6 funding was made under Title 9 of the federal anti-
 7 discrimination laws.

8 On February 1, 2017, STS expelled S.P. and
 9 K.P. from STS. The Appellate Division stayed the
 10 expulsion on February 2, 2016 and remanded this matter
 11 to this Court for a determination as to whether the
 12 expulsion should be permitted.

13 On February 15, 2017, Cardinal Tobin
 14 rescinded the expulsion.

15 On February 17, 2017, this Court ordered
 16 that S.P. be allowed to play on the boys basketball
 17 team.

18 Discord arose between many members of the
 19 STS community and the Phillips family, resulting in an
 20 online petition seeking their removal. There were
 21 also various Facebook posts in which various members
 22 of the community objected to their participation in
 23 the STS community.

24 On March 1, 2017, plaintiff and Ms. Mullen
 25 made a motion to amend the complaint in this case to

1 have more than 80 defendants affiliated with the STS
 2 community joined as a part of the complaint and adding
 3 Ms. Mullen as a complaint -- plaintiff. This Court
 4 dismissed most of the amended complaint. In the time
 5 it arrived before this Court, there was actually a
 6 third amended complaint. And that denial was made
 7 without prejudice to repleading and refiling that
 8 pleading.

9 On April 2, 2017, the Archdiocese issued a
 10 letter through Dr. Dames refusing to re-enroll S.P.
 11 and K.P. at STS for the 2017-2018 school year.

12 Plaintiff amended his lawsuit claiming
 13 breach of contract and that the non-re-enrollment was
 14 retaliation for his efforts to seek to protect his
 15 children.

16 Defendants, the Archdiocese of Newark and
 17 Saint Theresa's, claim the non-re-enrollment of the
 18 children was an ecclesiastical decision which was
 19 based on the inability of Saint Theresa's School to
 20 function peacefully. Specifically, they claim the
 21 aggression of Mr. Phillips and Ms. Mullen, as parents,
 22 interfered with the peace and tranquility of the
 23 school community and inhibited the school from
 24 realizing its ecclesiastical mission.

25 Defendants further claim that they had a

1 secular right to deny re-enrollment to the children
 2 because of disruptive behavior of their parents.
 3 Defendants point out that the enrollment contracts
 4 between the defend -- between Saint Theresa's School
 5 and other parents are one-year contracts which are
 6 separately entered into each year and they would be
 7 the same contract that would also be offered to Mr.
 8 Phillips and Ms. Mullen. Defendants claim they had no
 9 legal obligation to enter a new one-year contract with
 10 Mr. Phillips and Ms. Mullen to re-enroll S.P. and K.P.
 11 for the upcoming academic year starting on September
 12 6th.

13 In analyzing this case, the more detailed
 14 factual -- a more detailed factual background is
 15 necessary and warrants consideration. Specifically,
 16 the following:

17 In or around May 2016, S.P. complained to
 18 her mother that she witnessed inappropriate behavior,
 19 such as gyrating and sexually offensive comments by
 20 boys in her class. She also indicated she was
 21 threatened with a knife. S.P. told her mother about
 22 inappropriate words and classroom talk, much of which
 23 was of an inappropriate sexual nature. Ms. Mullen set
 24 up a meeting with the school's principal, Sister
 25 Hélène Godin.

1 Sister Hélène had been a Catholic school
2 principal for nearly 30 years and was a member of the
3 Salesian order. The Salesian educational philosophy
4 under which Sister Hélène administered STS was, quote,
5 "reason, religion and kindness," unquote. She
6 understood her mission to develop the whole child body
7 and soul.

8 At the time of the meeting, Sister Hélène
9 served as principal for approximately six years. She
10 testified that as soon as this issue was brought to
11 her, she spoke to the teacher involved and she also
12 contacted the local police to report the threat of the
13 use of the knife. Plaintiff scheduled -- Mr. Phillips
14 scheduled appointments with Sister Hélène later that
15 month. Sister -- as did Ms. Mullen. Sister Hélène
16 investigated the sexual allegations, imposed what she
17 deemed to be appropriate discipline upon the offending
18 students. Because discipline upon the offending
19 students was confidential to that minor and the
20 student's family, the discipline taken was not shared
21 with Ms. Mullen.

22 Later that month, Ms. Mullen had an
23 interaction with B.P.'s teacher, home room teacher,
24 Sister Juliet (phonetic), who was also -- Ms. Mullen
25 complained that, as a result of the interaction, that

1 S.P. had with Sister Juliet (phonetic), her son B.P.
2 received a grade of 74 on a test and he also received
3 an 85 percent score on a test in which he answered 14
4 out of 15 questions correctly.

5 Ms. Mullen acknowledged that the mathematical
6 difference on the 85 percent test grade may be
7 attributable to the weight of the answers. Ms. Mullen
8 claims she was compelled to pursue the grading issue,
9 because she could not get an adequate response to
10 enable -- to explain -- her to explain to B.P. why the
11 grade was not higher.

12 Sister Hélène met with Ms. Mullen about this
13 issue at the end of May. On June 1, 2016, Mr. Phillips
14 then met with Sister Hélène about B.P. achieving the
15 status of valedictorian of his class. Mr. Phillips
16 claimed that he wanted to know in advance how the
17 valedictorian calculation would be arrived at, since
18 the previous year there was a .01 percent difference
19 between the valedictorian and the salutatorian. He
20 also claimed that he told Sister Hélène that he needed
21 this information advanced of the announcement of the
22 valedictorian since his son and the son of close
23 friends were the top students. He, therefore, wanted
24 to avoid conflict with the other family, who were
25 personal friends.

1 Sister Hélène testified that Mr. Phillips
2 threatened her that if B.P. was not named
3 valedictorian, Ms. Mullen would analyze every grade
4 and the school better have a good explanation for that
5 decision. Sister Hélène agreed that B.P. was a strong
6 student, but pointed out that there were other bright
7 students in the class. She testified that the meeting
8 ended with Mr. Phillips stating he hoped the
9 conversation was not useless. Mr. Phillips claims
10 Sister Hélène promised to let him know in advance of
11 the announcement of the valedictorian award.

12 On June 3rd, two days later, the grades were
13 tabulated and B.P. earned the honor of salutatorian.
14 Sister Hélène called Mr. Phillips about his son
15 receiving the honor of salutatorian. According to
16 Sister Hélène, plaintiff responded by voicing his
17 outrage that he did not get notice in advance and
18 called her a son of a bitch. Sister Hélène indicated
19 that she found the words, tone and content of the June
20 3 conversation to be threatening, bullying and
21 demeaning. Plaintiff denied the use of the phrase son
22 of a bitch, but indicated he was upset.

23 During her testimony, Sister Hélène was
24 visibly shaking -- shaken when she was recalling the
25 events in the entirety of the discussions about the

1 valedictorian issue. Her demeanor on the stand
2 indicated that her feelings of being intimidated were
3 credible, because, as the Court indicated, she did
4 seem, even while testifying about it, to be shaken.
5 Sister Hélène testified that she stepped down as
6 principal and claimed that she lost confidence as a
7 result of this hostility.

8 Mr. -- plaintiff offered testimony to
9 minimize his conduct, claiming that Sister Hélène did
10 not keep her word and he admitted he was angry. His
11 testimony seemed to be contradictory. He said she
12 broke her word, but said she was not a liar. Her --
13 his -- Mr. Phillips' efforts to parse words in
14 explanation supported Sister Hélène's view of his
15 hostility.

16 On June 3, 2016, Ms. Mullen had another
17 meeting with Sister Hélène in which she -- in which
18 Sister Hélène explained the decision. Ms. Mullen was
19 not satisfied with the efforts of Sister Hélène to
20 address her concerns.

21 On June 6, 2016, Ms. Mullen wrote to Dr.
22 Margaret Dames, superintendent of the Archdiocese
23 schools. Dr. Dames acts as the chief administrator of
24 the network of Archdiocese schools, overseeing more
25 than 90 primary and secondary schools which the

1 Archdiocese operates. The Archdiocese educates over
 2 30,000 students. Dr. Dames reports directly to the
 3 Archbishop, Cardinal Tobin, about the operation of the
 4 Archdiocese schools. Cardinal Tobin relies on her
 5 management and is rarely involved in individual student
 6 decisions, because of the number of issues that he
 7 needs to oversee.

8 Ms. Mullen complained in her June 6th letter
 9 referenced above that there was a pattern of behavior
 10 that negatively affected S.P., resulting in S.P. being
 11 re-victimized and her son, B.P., being negatively
 12 affected. In her letter, she -- both Dr. Dames and
 13 Sister Hélène explained how they resolved each of
 14 these issues.

15 The first issue raised was that a picture
 16 was shown to S.P. of a gun by a non -- a male non-
 17 student at STS who was frequenting STS property. In
 18 her testimony, Dr. Dames explained that the incident
 19 was reported to the local police immediately. In
 20 contrast, Ms. Mullen testified that neither she nor
 21 her husband, a retired Kenilworth police captain,
 22 reported the matter to the Kenilworth Police
 23 Department. Dr. Dames appears to have taken
 24 appropriate steps in her discretion to resolve the
 25 problem and there was no testimony at trial that this

1 problem ever resurfaced.

2 The second issue was Ms. Mullen reported
 3 that there were sexually inappropriate behavior of
 4 boys gyrating on desks and boys making sexually
 5 inappropriate statements to girl students. Ms. Mullen
 6 testified that the boys made offending sexual comments
 7 and were the perpetrators. Ms. Mullen testified that
 8 other parents also made appointments with Sister
 9 Hélène to express outrage about this behavior. At
 10 trial, Ms. Mullen clarified that two boys were
 11 involved. Sister Hélène and Dr. Dames testified that
 12 appropriate discipline was imposed. The boys are
 13 minors. The discipline was not discussed with Ms.
 14 Mullen.

15 Ms. Mullen was asked for an interview with
 16 S.P. by the administration, but that interview was
 17 refused, claiming that it would re-victimize her. And
 18 she also refused to identify the offending boys,
 19 saying that information was already known to Sister
 20 Hélène. It escapes the Court to understand why, if
 21 this information was known, it couldn't be provided to
 22 make sure there was no error. Ms. Mullen agreed in
 23 her cross-examination that the offending conduct did
 24 not occur during the following school year and,
 25 therefore, that conduct likewise appeared to be

1 appropriately remedied.

2 In her letter, as a third grievance, Ms.
3 Mullen complained about a substitute teacher's
4 inappropriate conduct. That conduct was likewise
5 addressed by the teacher being removed from the
6 substitute teacher's list.

7 The fourth issue addressed, which was the
8 heart of a series of letters, complained about B.P.'s
9 grade and plaintiff and Ms. -- and Mr. Phillips and
10 Ms. Mullen's dissatisfaction that they were not
11 informed of the valedictorian selection prior to its
12 announcement. In that letter, contrary to Mr.
13 Phillips' testimony, Ms. Mullen stated that plaintiff
14 could not believe that Sister Hélène lied to her --
15 lied to him. In his testimony, Mr. Mullen
16 specifically -- Mr. Phillips specifically said --
17 refused to say that he was lied to. Ms. Mullen
18 indicated that she and her husband met with Sister
19 Hélène, but were not satisfied with the answer. Ms.
20 Mullen concluded her June 6th letter stating, quote:

21 "By way of this letter, I am requesting an
22 immediate meeting with the Archdiocese before
23 graduation tomorrow evening. I am requesting the
24 written policy of how the
25 valedictorian/salutatorian is computed be

1 provided to me, including how the advanced math
2 class is weighted, together with exactly how it
3 was calculated this year, with backup figures, so
4 that I can confirm that it was accurately done."

5 And that letter is, I believe, P-23A in
6 evidence.

7 Ms. Mullen couched her request in terms of
8 giving closure to her son for not being named
9 valedictorian. However, the demand of an immediate
10 meeting, the otherwise argumentative remarks made by
11 Mr. Phillips in his meeting and phone call with Dr. --
12 with Sister Hélène, were an effort to control the
13 grading process and to change the valedictorian award.
14 The Court is satisfied that Dr. Dames and Sister
15 Hélène were exercising appropriate judgment and were
16 not required to respond to angry micro management.

17 Parenthetically, the Court notes that the
18 Phillips' complaints about these matters were rooted
19 in advancing their son's best interests. Their
20 complaint about S.P.'s experiences were likewise
21 rooted in S.P.'s best interests. However, Mr. Phillips
22 and Ms. Mullen appeared to lost objectivity and sought
23 the resolution of their grievances by taking an
24 extremely confrontational approach, rather than a
25 conciliatory approach.

1 In response to Ms. Mullen's letter, Dr.
 2 Dames assigned the investigation of Ms. Mullen's June
 3 6th complaints to one of her superintendents, Sister
 4 Patricia Butler. Dr. -- as mentioned above, Dr. Dames
 5 oversees the education of approximately 30,000
 6 students. Therefore, she relies on associate
 7 superintendents, including Sister Butler.

8 Ms. Mullen spoke to Sister Butler on June 7,
 9 2016. Ms. Mullen sent a further letter to Sister
 10 Butler on June 8, 2016 and that letter likewise
 11 complained about the valedictorian selection. In her
 12 letter, Ms. Mullen stated, quote:

13 "Once again, I am requesting the written
 14 policy of how the valedictorian/salutatorian is
 15 computed to be provided to me, including how the
 16 advanced math class is weighted, together with
 17 exactly how it was calculated this year, with
 18 backup figures, so that I can confirm that it was
 19 accurately done." Unquote.

20 Ms. Mullen's letter went on to state, quote:

21 "If the Archdiocese refuses to give me this
 22 information, I remind STS and the Archdiocese by
 23 way of this letter that both have been put on
 24 notice to preserve all requested materials, in
 25 the event they are not voluntarily given to me,

1 and that additional action needs to be taken."

2 This letter characterizes actions of Saint
 3 Theresa's School as being bullying and harassment of
 4 her family and characterizes that behavior as, quote,
 5 "deplorable," unquote, and that is -- that letter is
 6 joint ex -- Plaintiff's Exhibit 23-2B, I believe.
 7 However, in making such claims, Ms. Mullen failed to
 8 appreciate the way in which her words would be
 9 received by religious educators and did not consider
 10 that her efforts to protect her son had gone too far.

11 Sister Butler requested on June 13th the
 12 students' names responsible for the inappropriate
 13 behavior and, as mentioned before, Ms. Mullen would
 14 not provide that information.

15 On June 15, 2016, Ms. Mullen wrote to Dr.
 16 Dames complaining she did not have closure on the
 17 valedictorian issue. At the end of her letter, she
 18 stated, quote: "Please be advised that if no response
 19 by week's end, I will have no other choice than to
 20 take this matter to the next level. I hope this is
 21 not necessary." Period, unquote. And that's P-23-2C.

22 On June 27, having received Sister Butler's
 23 June 13th correspondence, Ms. Mullen wrote to Sister
 24 Butler stating she would not provide the names of the
 25 boys who engaged in sexually inappropriate behavior,

1 even though she said the information could be obtained
2 from Sister Hélène and was obviously known to her.

3 In the fall of 2016, at the beginning of the
4 school year, the registration period for CYO basketball
5 began. Several girls who were on S.P.'s basketball
6 team in the prior year at STS had graduated and there
7 were not enough girls to form a girls' team at STS for
8 S.P.'s age group for the season -- for the 2016-2017
9 league year.

10 Applications for participation were sent to
11 students on September 19, 2016. Richard Donovan, the
12 associate director of the league, claimed he advised
13 Ms. Mullen on September 28, 2016 that the roster
14 submission deadline for the league was October 25th
15 and that if there were not enough applicants to form a
16 STS girls' team, efforts would be made to place Saint
17 Theresa's girl students on a neighboring team.

18 Ms. Mullen denied this conversation ever
19 took place and claimed she was not advised of a
20 deadline. Ms. Mullen claimed that she first learned
21 from another parent that the deadline from -- to form
22 a girls' team had passed and she immediately asked
23 that she be permitted to solicit the late formation of
24 a girls' team, as she was allowed to do in the prior
25 year. Her request was refused and she then requested

1 that S.P. be placed on the Saint Theresa's 7th grade
2 boys' team. Ms. Mullen requested S.P.'s placement on
3 the boys' team, because of S.P.'s deep sense of
4 loyalty to STS and because of her desire to
5 participate in the school spirit of STS. She did not
6 want S.P. to play for a neighboring girls' school
7 team.

8 Ms. Mullen claimed that applications were
9 accepted from two boys to play on the boys' team after
10 the deadline and that CYO rules did not prohibit S.P.
11 from playing on the boys' team. Mr. Donovan, the
12 league director, denied her request. Mr. Donovan also
13 was an STS parent, but was functioning in the capacity
14 as league director, an entirely different role.

15 On October 18, 2016, S.P.'s sister, K.P.,
16 received a written warning notice from her gym
17 teacher, Brittany Dvorscak. According to Ms. Dvorscak,
18 students were told to stop talking in the hallway or
19 they would receive a warning notice. While Ms.
20 Dvorscak was not -- did not testify at trial, the
21 Court got testimony from witnesses on both sides about
22 this incident. On her way back from gym class, Ms.
23 Dvorscak advised Deacon Joe that K.P. continued to
24 talk. She received a written warning notice for
25 excessive talking.

Mr. Phillips testified that K.P. never received a prior warning and was very upset. Ms. Dvorscak met with Mr. Phillips and explained the events. Mr. Phillips challenged her and asked the warning notice to be withdrawn. A discussion ensued and Mr. Phillips and Deacon Joe also discussed -- with the principal, discussed the situation and at Deacon Joe's request, the warning notice was withdrawn and Ms. Dvorscak agreed that if K.P. received another notice, that she would hand it directly to Mr. Phillips. And this is yet another example of grievances that the Phillips family had that the school responded to.

On October 28, 2016, there was an STS-sponsored, quote, trunk-or-treat, unquote, event. This annual event revolves around parents decorating their cars and dispensing candy, having their personal cars function as the equivalent of a Halloween home. According to Ms. Mullen, S.P. came home from the trunk-or-treat car event complaining that she was belittled at one location by one of the parents, reducing her to tears.

On November 4, 2016, Ms. Mullen wrote a letter to the principal, Deacon Joe Caporaso, claiming -- complaining about the actions of the parent at the

trunk-or-treat event and also complaining about the rejection of S.P.'s basketball registration forms. In her correspondence, she pointed out that she had met with Deacon Joe earlier in October to discuss the difficulty of fielding a girls basketball team the prior year. Deacon Joe characterized this meeting as a history lesson on STS's girls basketball. Based on that information that she previously provided to Deacon Joe, Ms. Mullen expressed her belief that the late registration should be accepted and also complained about STS's [sic] treatment at the trunk-or-treat.

After receiving the e-mail, Deacon Joe met with Ms. Mullen and suggested she try to work out the trunk-or-treat problem with the offending parent via direct conversation with that parent. In fact, at trial, Deacon Joe testified that the two parents had different versions of the story and he believed that it would be more appropriate for the parents to work this out between themselves. He also indicated he had no knowledge about the sports program and no interest in sports programs, and that Ms. Mullen should reach out to league officials.

On November 8, 2016, Ms. Mullen wrote to Dr. Dames and Sister Butler complaining that S.P. had been

1 re-victimized at the trunk-or-treat event and
 2 requested an immediate investigation into CYO -- into
 3 the CYO basketball league director's conduct in
 4 thwarting S.P.'s participation on the boys' team, since
 5 there was no girls' team. She also indicated she
 6 wanted to be named as head coach of the boys' team.
 7 She demanded a written response from STS and the
 8 Archdiocese. At the end of the letter, she stated,
 9 quote: "If I fail to receive a response by the close
 10 of business tomorrow, I will have no other choice but
 11 to take all the aforementioned to the next level,"
 12 unquote. P-23-2E.

13 On November 18, 2016, Ms. Mullen wrote to
 14 Dr. Dames stating she would -- she was making a final
 15 request for a meeting and concluded the letter by
 16 saying, quote: "If a meeting is not scheduled by the
 17 close of business today, I will have no choice but to
 18 file the appropriate legal work on Monday, which I
 19 hope is not necessary," unquote.

20 On November 22, 2016, plaintiff and Ms.
 21 Mullen met with Sister Butler and Dr. Dames. At the
 22 meeting, in view of the impending litigation, Dr. Dames
 23 recommended the Phillips' attorney reach out to the
 24 Archdiocese attorney to attempt to come to the res --
 25 to a resolution. It appeared at the meeting that a

1 resolution was not possible and that the matter may
 2 well come to litigation. It was the hope that if the
 3 attorneys were to talk to each other, the litigation
 4 could be avoided.

5 On December 2, 2016, plaintiff filed the
 6 initial complaint in this matter, seeking, among other
 7 things, that S.P. be permitted to play basketball on
 8 the boys' team.

9 Shortly after the complaint, Mr. Phillips
 10 called his boyhood friend, Kevin Kernan, a sports
 11 writer for the New York Post. Plaintiff testified
 12 that he thought that S.P.'s desire to play on the
 13 boys' team was a human interest story which would
 14 appeal to the press. He stated he wanted the story to
 15 get out accurately and, therefore, contacted his
 16 boyhood friend, Mr. Kernan.

17 In his testimony, Mr. Phillips conceded that
 18 Mr. Kernan is a highly respected and widely read
 19 sports writer. Mr. Phillips denied contacting the
 20 newspaper to obtain leverage; however, he admitted
 21 that he freely made himself and his children available
 22 to other media outlets for interviews. Mr. Phillips
 23 refused to acknowledge that the press attention could
 24 have a negative effect on the Saint Theresa's community
 25 and that the public attention from the basketball

1 dispute was a cause for concern for the community,
2 including the administrator -- its teachers, the
3 administrators and families.

4 The information that defendants received
5 from parents and/or administrators was that the press
6 coverage initiated by Mr. Phillips was disrupting the
7 peaceful operation of the school -- Catholic school
8 community.

9 During this case, the Court agreed it would
10 not hear testimony of individuals communicating about
11 this matter with the defendants. Rather, this Court
12 said it would hear testimony about this information to
13 obtain evidence as to the perception that defendants
14 had about these complaints and the action that was
15 resulted from those reports. And in so doing, this
16 Court relied on Carmona v. Resorts International Hotel,
17 189 N.J. 354, 376 (2007) and Toto versus Princeton
18 Township, 404 N.J.Super. 604, 619 (Appellate Division
19 2009).

20 On February 1, 2016, defendants made a
21 decision to expel the children from Saint Theresa's
22 School. The expulsion letter was delivered to
23 plaintiff by defendants' counsel by an e-mail sent
24 after office hours. Defendants' counsel advised
25 plaintiff's counsel that he children were expelled and

1 should not return to school the next day.

2 The February 1 letter was issued by Dr. Dames
3 and indicated that S.P. and K.P. would be asked not to
4 return to the school. In her letter, Dr. Dames stated
5 that on August 30, 2016, plaintiff executed an
6 acknowledgment accepting the rules and regulations of
7 the school. Dr. Dames' letter pointed out that the
8 student handbook stated that, quote: "If a parent
9 implicates Saint Theresa's in a legal matter or names
10 Saint Theresa's School as defendants in a civil
11 matter, the parents/guardians will be requested to
12 remove their children immediately from the school."
13 Period, unquote. Exhibit J-1.

14 Plaintiff and Ms. Mullen received the e-mail
15 from their attorney while they were attending a New
16 York Liberty Basketball Team practice with S.P. and
17 one of her friends. They claim that the manner and
18 timing of the expulsion was a further act of
19 retaliation precipitated by plaintiff actively
20 pursuing a litigation seeking S.P.'s right to play
21 basketball on the boys' team.

22 The next morning, plaintiff and Ms. Mullen
23 brought the children to Saint Theresa's School. Mr.
24 Phillips left Ms. Mullen, S.P. and K.P. at the school.
25 He then brought B.P. to Seton Hall Prep. Shortly

1 thereafter, Deacon Joe, the principal, asked Ms.
 2 Mullen to meet with him in the office to discuss the
 3 expulsion, since he did not want to address the matter
 4 publicly, but preferred to do so in private. He was
 5 accompanied at the meeting by Father Joe, the pastor
 6 of Saint Theresa's Church, and Father Vincent.

7 Ms. Mullen was asked to leave the by Deacon
 8 Joe. She refused. Deacon Joe then read a statement
 9 to Ms. Mullen prepared by defendants' counsel stating
 10 that the children were expelled from school, that Ms.
 11 Mullen must leave the school grounds, and that if she
 12 did not leave the building, that trespass charges
 13 would be brought against her. Ms. Mullen refused to
 14 leave the building, stating, among other things, that
 15 she would not leave without a court order and without
 16 an explanation upon which the expulsion was based.
 17 Ms. Mullen did not leave the building immediately, but
 18 left the building eventually. A trespass complaint
 19 was signed by Father Joe.

20 Plaintiff presented testimony from Mark
 21 Bergamotto, a close personal friend and STS parent,
 22 about the events of February 2. Mr. Bergamotto's
 23 testimony was wholly incredible. He testified he
 24 parked his car strategically to watch the events of
 25 February 2. His testimony appeared to be calculated

1 and could not be believed.

2 On February 2, 2016 [sic], the Archdiocese
 3 issued a press release indicating the student handbook
 4 contained a provision that students would be expelled
 5 immediately if the parents initiated litigation
 6 against STS and that Mr. Phillips agreed in writing to
 7 this term in the handbook.

8 The trespass incident is a truly unfortunate
 9 part of this case. There is little doubt that, in
 10 this instance, both parties could have exercised
 11 better judgment. Neither side took the initiative to
 12 first discuss this matter off the school grounds.
 13 Sadly, the Phillips children, S.P. and K.P., were
 14 brought to school by her [sic] parents that day and
 15 witnessed some of these unfortunately events. Both
 16 parties should have taken responsibility for the
 17 position in which the Phillips children were placed.

18 Plaintiff filed an application with the
 19 Court to stay the expulsion of S.P. and K.P. The
 20 removal of the children from the school was enjoined
 21 by the entry of a stay issued by the Appellate
 22 Division. That order enjoined the removal pending a
 23 hearing by this Court and remanded the matter to this
 24 Court to determine whether the removal should be
 25 authorized or should be vacated.

On February 2, 2016 [sic], the Phillips children -- or February 3, 2016 [sic], the Phillips children returned to school.

Cardinal Tobin was installed as Archbishop of Newark beginning in January 2017. He read about the expulsion of the Phillips children in a newspaper and also read that some girls had been playing on a boys CYO team, resulting in that team's exclusion from further play in the boys basketball league. Cardinal Tobin perceived S.P.'s expulsion to be based on her desire to play basketball. He believed that decision was misplaced. He expressed sympathy for S.P., due in part to the fact that he has eight sisters and several nieces. He also learned that the coed team forfeited games in the boys' league for violation of the league rules. He reversed the exclusion of the coed team from playing in the boys' league. He further learned that S.P. and K.P.'s expulsion was based on a student handbook provision that a student could be expelled if parents were bringing a lawsuit against the defendants. He did not agree with that policy and asked the handbook provision to be eliminated.

On or about February 17, 2017, this Court entered an order compelling the addition of S.P. to the 7th grade boys' team, a decision founded in large

part on the fact that the Court -- this Court learned that girls were permitted to play on another boys' team in the CYO league. Initially, this Court had been advised that there were only separate boys' and girls' teams participating in the CYO league. Based on this evidence, the Court denied the initial application to allow S.P. to play on the boys' team. After the additional information was provided to the Court that girls were playing on a boys' team in the league, this Court changed its ruling and ordered that S.P. be allowed to play basketball on the boys' team for the remainder of the current season.

Plaintiff points out that this Court was provided with false submissions in and around December 2016 that no girl played on any boy team -- boys' team. However, the individual responsible for this information, Mr. Donovan, was not a witness in this case, thus whether [sic] the incorrect information provided with this -- with respect to an earlier issue was not the subject matter of testimony in the hearing on the re-enrollment issue.

On February 15, 2017, Cardinal Tobin issued a press release in which he rescinded the expulsion of S.P. and K.P. The press release also state the coed team would be allowed to finish its play in the boys'

1 league for the current season.

2 Deacon Joe testified at trial that a
3 disruptive atmosphere at STS intensified dramatically
4 after S.P. and K.P. returned to school in February.
5 He received verbal and written communication from STS
6 parents expressing concerns about the disruptive
7 atmosphere at school, which other STS parents perceived
8 was caused by the Phillips family.

9 The STS parents were concerned about the
10 disruption caused by the lawsuit over basketball, the
11 intense media attention that followed, and the
12 disruptive effect of the reinstatement of the children
13 by the Court. Some of the parents who wrote to Deacon
14 Joe complaining that [sic] the Phillips family wanted
15 to remain anonymous out of alleged fear of retribution
16 by the Phillips family.

17 As mentioned previously, the Court did not
18 consider this evidence as to whether or not it was
19 truthful, this -- rather, this evidence was reviewed
20 to determine what action was taken by the defendants
21 as a result of this information.

22 Deacon Joe testified that on the day of the
23 expulsion, news vans had been parked adjacent to the
24 school grounds of the church and had also been parked
25 there on other occasions. He stated that a 2nd grader

1 -- all because of this case, the Phillips' case. He
2 stated that a 2nd grader expressed her desire not to
3 attend STS in the future because of the presence of
4 news vans. Another student asked to be dismissed
5 through the back door, rather than the front door,
6 because of the news vans' presence.

7 He also pointed out that several parents
8 signed an online petition voicing their concerns about
9 the uproar created by this information -- by this
10 litigation. The petition itself, which was placed in
11 evidence by the plaintiffs, was signed by dozens of
12 individuals who complained about comments to the media
13 and what they perceived to be disparaging remarks
14 about the school and its students, and the overall
15 disruption that they felt the public attention of this
16 litigation was causing.

17 Plaintiffs stated that -- or were of the
18 belief that the petition was endorsed by STS, but I
19 will get to it a little later. Actually, Sister --
20 Dr. Dames specifically tried to stop the petition and
21 neither STS nor the Archdiocese have any power to take
22 down that petition. What they did about is, Dr. Dames
23 asked members of the community not to sign it anymore
24 and teachers were told by Deacon Joe and by Dr. Dames
25 that they were not to sign such a petition going

1 forward. So, they did try to act. They were also
 2 told that any Facebook -- the teachers were told not
 3 to post negative facebook posts and members of the
 4 community were likewise asked to stop such behavior.

5 Given the controversy which arose at the
 6 time the Phillips children returned to school, Dr.
 7 Dames, as superintendent of schools, decided to hold
 8 parent meetings at STS to calm down the situation and
 9 to refocus all the parents on the mission of the
 10 school to educate the children in a loving and
 11 nurturing environment. Dr. Dames wanted to restore a
 12 tranquil and cooperative environment. For that
 13 reason, she scheduled listening sessions for February
 14 22, 2017. Dr. Dames first met with approximately 14
 15 teachers. The -- she then met with parents in groups
 16 of ten. It was her goal to bring the focus of the
 17 school back to joy and optimism, consistent with its
 18 ecclesiastical mission.

19 Ms. Mullen attended the first listening
 20 session on February 22. At those -- the listening
 21 sessions, Dr. Dames asked for the online petition to
 22 be stopped from everyone who was at the -- at those
 23 listening sessions, and when -- and she also learned
 24 at those sessions for the first time that there were
 25 Facebook posts, and she also asked for the negative

1 Facebook posts to stop.

2 It was her aim in having this meeting to
 3 calm tensions and restore harmony in the school
 4 between all parents and teachers, including Ms. Mullen
 5 and Mr. Phillips. She asked for the cooperation of
 6 the school community on refocusing their attention to
 7 create a positive environment. Dr. Dames urged the
 8 parents to be positive and to stop negative
 9 interactions, so the educational mission could move
 10 forward.

11 On the very next day, February 23, 2017, Ms.
 12 Mullen wrote to Cardinal Tobin complaining that she
 13 and her family had been victims of negative statements
 14 by Mr. Donovan, the director of the CYO, negative
 15 Facebook posts by STS parents and the online petition
 16 by various STS parents and teachers. Ms. Mullen asked
 17 for an opportunity to meet privately with Cardinal
 18 Tobin to discuss her concerns and, quote, "if at all
 19 possible, before the new set of legal papers are to be
 20 filed on March 1, 2017." Thus, she gave Cardinal
 21 Tobin an ultimatum that if he did not meet with her
 22 within the next six days, and presumably satisfy her
 23 concerns, further litigation would follow. Cardinal
 24 Tobin claimed he never saw this letter prior to trial.

25 Plaintiff and Ms. Mullen filed the motion to

1 amend the complaint, seeking to add Ms. Mullen as a
 2 plaintiff and suing at least 80 individuals associated
 3 with the STS community and Archdiocese personnel,
 4 including Father Joe and Dr. Dames.

5 Dr. Dames testified that the filing of the
 6 lawsuit showed that there was not going to be an easy
 7 resolution of the dispute between the parties. Her
 8 testimony subjected [sic] that her objective to calm
 9 the controversy was undermined by Mr. Phillips and Ms.
 10 Mullen filing this amended lawsuit.

11 After the filing of the lawsuit, the uproar
 12 at STS intensified. Deacon Joe observed the new
 13 lawsuit and ongoing presence of the press continued to
 14 cause disruption at the school and interfered with its
 15 normal functioning. He understood that parents,
 16 teachers and students were fearful because of their
 17 interactions with the Phillips family and were fearful
 18 of reprisals.

19 Again, as I indicated, this testimony was
 20 not considered for the truth of the matter, but in
 21 terms of the conduct that it caused on the part of
 22 Deacon Joe.

23 Deacon Joe likewise testified that he was
 24 intimidated by the Phillips family. He recommended to
 25 Dr. Dames, superintendent of the schools, and Reverend

1 Monsignor Thomas Nydegger, the vicar general and
 2 moderator of the curiae of the Archdiocese, that the
 3 Phillips family not be allowed to re-enroll S.P. and
 4 K.P. for the following school year.

5 Reverend Monsignor Nydegger acts as second
 6 in command in the administration of the ecclesiastical
 7 and secular activities of the Archdiocese. It is
 8 hardly unusual -- highly unusual for Monsignor Nydegger
 9 or Cardinal Tobin to be consulted about school
 10 decisions.

11 Both Dr. Dames and Monsignor Nydegger
 12 concluded that the actions taken by Mr. Phillips and
 13 Ms. Mullen escalating the lawsuit and by adding new
 14 claims against the Archdiocese, suing STS employees
 15 and volunteers -- and this was more -- I'm sorry. I
 16 take that back. This was more about Monsignor
 17 Nydegger's testimony, not Dr. Dames. And that suing
 18 80 individuals for expressing their opinion was
 19 inconsistent with the Catholic mission of STS and
 20 undermined its pastoral objectives. He, therefore,
 21 recommended to Cardinal Tobin that he decide -- that
 22 he endorsed the decision not to re-enroll S.P. and
 23 K.P. Dr. Dames, likewise, made such a recommendation.

24 Cardinal Tobin testified that he learned
 25 about the proposed expansion of the lawsuit. He also

1 learned from Sister Hélène of the incredible pressure
 2 she and faculty were under as a result of the conduct
 3 of the Phillips family. Cardinal Tobin stated that he
 4 did not know about the extent of the controversy at
 5 the school when he rescinded the February expulsion
 6 and at this later time, after the recommendation was
 7 made to him not to re-enroll, he -- he got -- he
 8 received much more information about what happened
 9 earlier.

10 At the time that Cardinal Tobin rescinded
 11 the expulsion, he assumed the expulsion was because of
 12 a dispute over basketball. He learned in the recent
 13 meetings that the problem was not basketball, but
 14 rather that plaintiff's actions had upset the
 15 tranquility of the school. When he saw the litigation
 16 expanded, Cardinal Tobin was astounded. He became
 17 aware of letters written by parents complaining about
 18 the Phillips family and came to understand the
 19 detrimental effect of the aggressive steps taken by
 20 Mr. Phillips and Ms. Mullen.

21 In reinstating the children earlier, it was
 22 Cardinal Tobin's aim that the children would be
 23 integrated in the school and everyone would move on.
 24 He was -- he felt that the profoundly expanded
 25 litigation was inconsistent with his decision to

1 rescind the expulsion.

2 Cardinal Tobin does not get involved in day-
 3 to-day decisions of the Archdiocese school. He
 4 testified that it is impractical or impossible for him
 5 to oversee more than 90 Catholic primary and secondary
 6 schools. Therefore, there is a school superintendent,
 7 Dr. Dames, who oversee the operations.

8 Cardinal Tobin believed in making his
 9 decision, the peace and tran -- that the tranquility
 10 and well-being of the STS community necessitated his
 11 decision. He indicated that the decision was not
 12 intended to be punitive and he was considering the
 13 well-being of the entire community. He emphasized
 14 that only a serious reason would get him to approve
 15 the decision.

16 On March 22, 2017, the Archdiocese issued a
 17 press release indicating a lawsuit had been filed
 18 against the Archdiocese and STS and they intended to
 19 defend, quote, "this baseless lawsuit," unquote. The
 20 statement was placed in the backpack of each student.
 21 Plaintiff and Ms. Mullen claimed that this -- the
 22 placement of the press release in the backpacks was an
 23 effort to target and embarrass their children.
 24 Archdiocese witnesses indicate that the statement was
 25 sent out to members who wanted to know how the issue

1 was being handled. The statement was also posted on
 2 the wall of the church, which the plaintiff and Ms.
 3 Mullen claimed was embarrassing and traumatizing to
 4 their children. However, other press releases were
 5 also posted in the church.

6 Further, more significantly, the Court is
 7 puzzled how Mr. Phillips and Ms. Mullen could not see
 8 that their escalation of this controversy would not
 9 generate a reaction. Defendants were in need to let
 10 the parishioners know how it will respond to a very
 11 controversial matter. Based on the credible testimony
 12 of Deacon Joe and Dr. Dames's sincere concerns about
 13 the uproar in the STS community, it is evident that
 14 the press release was aimed at letting the STS
 15 community know that the defendants would protect the
 16 members of that community.

17 It should be noted that Deacon Joe was
 18 forthright in his testimony and his testimony also
 19 indicated that he was visibly shaken by these events.
 20 He testified that in his many years as a school
 21 administrator he had not witnessed such an intense
 22 controversy.

23 Dr. Dames, a seasoned administrator with 30
 24 years of experience, likewise testified her perception
 25 of the uproar caused by the Phillips family by writing

1 letters and expressions was the most extreme
 2 controversy she had ever witnessed.

3 On June 29, 2017, plaintiff filed a motion
 4 to compel defendants to re-enroll S.P. and K.P. at
 5 STS. A hearing was held before the Court on June 29th.
 6 After the hearing, the Court entered an order
 7 scheduling a plenary hearing.

8 On June 29th, the Archdiocese issued a press
 9 release referencing the motion and the attacks made by
 10 plaintiff and Ms. Mullen in the court papers.

11 On June 29th, the Archdiocese issued a
 12 further press release reflecting its disappointment of
 13 the scheduling of a plenary hearing and expressing
 14 optimism that it would prevail in defeating plaintiff's
 15 re-enrollment application.

16 The statements -- these statements were
 17 published in the Archdiocese bulletin. Plaintiff
 18 claims that publication of these documents, in which
 19 the Archdiocese publicly defended itself against the
 20 plaintiff action, re-victimized their family.
 21 Unfortunately, blinded by the desire to protect their
 22 children, the plaintiff and Ms. Mullen could only see
 23 their point of view and did not consider the reaction
 24 that their actions would cause. They also failed to
 25 see how the confrontational manner in which they

1 voiced their concerns would be perceived.

2 It is important to emphasize that the
3 decision not to re-enroll S.P. and K.P. had nothing to
4 do with the successful efforts of plaintiff to allow
5 S.P. to play basketball for the team. That decision
6 was a product of the controversy. And I will address
7 that specifically later in my decision the reasons why
8 I believe that the refusal to re-enroll the children
9 was totally unrelated to the Court's decision on the
10 basketball issue.

11 On June 11, 2017, Deacon Joe wrote a letter
12 indicating that Saint Theresa's School fully agrees
13 with and endorses the ecclesiastical decision regarding
14 the denial of S.P. and K.P.'s re-enrollment for the
15 2017-2018 school year, as set forth in the April 3
16 correspondence written by Dr. Dames which indicated
17 the children would not be re-enrolled. Both letters
18 were sent to Mr. Phillips and Ms. Mullen.

19 The Court is convinced that Mr. Phillips and
20 Ms. Mullen were attempting to act in their children's
21 best interests. Unfortunately, Mr. Phillips and Ms.
22 Mullen, out of love for their children, chose an
23 extremely confrontational approach and did not
24 evaluate the circumstances objectively. Sister Hélène,
25 Deacon Joe, Sister Butler, and Dr. Dames all attempted

1 to respond to their concerns. Both Mr. Phillips and
2 Ms. Mullen did not objectively absorb the efforts
3 being made to address their concerns. They
4 intensified, rather than resolved problems. In fact,
5 many of the complaints they referenced were about
6 previously resolved issues. Rather than moving on
7 from resolved issues, they piled issues on top of
8 resolved issues.

9 On April 3, 2017, as the Court indicated, an
10 ultimate decision was made to decline to re-enroll
11 them in the school. The STS community has about 80
12 families and about 200 students. The Archdiocese and
13 STS determined the need to be mindful of the pastoral
14 needs of the entire STS community. Defendants
15 ultimately took steps to control the disruptive
16 atmosphere that Mr. Phillips and Ms. Mullen created.

17 Now, I'd like to turn to the applicable
18 legal principles. And to get to those, I also need to
19 do somewhat of a -- some legal analysis.

20 On or about March 1, 2017, plaintiff filed
21 an amended complaint. Thereafter, the Court directed
22 plaintiff to amend and supplement its complaint to
23 address the non-re-enrollment issue which came up
24 after the filing of the amended complaint. As
25 indicated previously, in that complaint plaintiff and

47

1 Ms. Mullen, who was to be added as a plaintiff, sought
2 to add approximately 80 individuals, including STS
3 employees, parents of STS students, and members of the
4 STS community for expressing opinions concerning the
5 lawsuit.

6 On April 3, 2016 [sic], Dr. Dames,
7 superintendent of schools, wrote a letter informing
8 Ms. Mullen and Mr. Phillips that K.P. and S.P.'s
9 re-registration application would not be accepted for
10 the upcoming 2017-2018 school year. Her letter
11 states, as follows:

12 "Dear Mr. Phillips and Judge [sic] Mullen:

13 The Saint Theresa's School mission statement
14 provides Saint Theresa's School -- Catholic
15 School and the Archdiocese of Newark is dedicated
16 to the cultivation of academic excellence and the
17 spiritual social and emotional growth of each
18 student. Our school nurtures an environment of
19 cultural diversity in which a caring faculty,
20 through the implementation of the education
21 system of Saint John Bosco, based upon reason,
22 religion and love and kindness, seeks to develop
23 each student to his/her potential. With Christ
24 and Mary as our examples, the Saint Theresa's
25 community grows [sic] in a family atmosphere in

48

1 which each individual experiences respect,
2 challenge, responsibility and exceptional love.

3 Actions and events initiated by you over
4 the last several months have directly interfered
5 with the fulfillment of this mission, not only
6 for Saint Theresa's School, but for also for its
7 administrators, staffs, students and parents. In
8 order to restore the promise of a 'family
9 atmosphere' characterized by 'respect, challenge,
10 responsibility and exception love,' Saint
11 Theresa's School will not be able to accept
12 enrollment for the 2017-18 school year.

13 The decision has been made in this time in
14 order to allow sufficient time for you to make
15 alternate arrangements for -- alternative
16 arrangements for next year. We wish good luck
17 with -- the children good luck with their future
18 endeavors. Thank you."

19 And that is, I believe, J-3 in evidence.

20 The non-re-enrollment decision was made
21 after the February 22nd listening sessions and after
22 efforts had been made to return to a spirit of peace
23 and tranquility in the community. And the lawsuit
24 that ensued and the ongoing press coverage that was
25 generated upset that peace and tranquility.

1 Religious educational institutions have a
 2 constitutionally protected right to be free from civil
 3 court interference. This argument is rooted in the
 4 United States Supreme Court's decision in Watkins v.
 5 Jones, 80 U.S. 679 (1871). In Watson, the Supreme
 6 Court considered judicial involvement in a church's
 7 property dispute. The court was asked to determine
 8 whether a certain sect of the church had control over
 9 church property. The Supreme Court said that civil
 10 courts were not allowed to interfere in this property
 11 dispute and this case resulted in the following
 12 landmark principle. And this is a quote.

13 "All who unite themselves to such a body do
 14 so with an implied consent to this government,
 15 and are bound to submit to it. But it would be a
 16 vain consent and would lead to the total
 17 subversion of such religious bodies if anyone
 18 aggrieved by one of their decisions could appeal
 19 to the secular courts and have them reversed. It
 20 is of the essence of these religious unions, and
 21 of their right to establish tribunals for the
 22 decision of questions arising among themselves,
 23 that those decisions should be binding in all
 24 cases of ecclesiastical cognizance, subject only
 25 to such appeals as the organism itself provides

1 for."
 2 And I believe that's from page 729 of that
 3 decision.

4 The rule announced by the court in Watson
 5 was, unless neutral principles of law apply, judicial
 6 decisions of ecclesiastical doctrine is banned under
 7 the First Amendment. The -- this rule was diluted in
 8 Gonzalez versus Roman Catholic Archbishop of Manila,
 9 280 U.S. 1, where the court stated -- the Supreme --
 10 the United States Supreme Court stated, quote:

11 "In the absence of fraud, collusion, or
 12 arbitrariness, the decisions of the proper church
 13 tribunals on matters purely ecclesiastical,
 14 although affecting civil rights, are accepted in
 15 litigation before the secular courts as
 16 conclusive, because the parties in interest made
 17 them so by contract or otherwise."

18 The -- this ruling was later modified by the
 19 Supreme Court in Serbian Eastern Orthodox for the
 20 United States of America and Canada versus
 21 Milivojevich, 426 U.S. 696 (1976). In that case, the
 22 Court modified the way it looked at these cases and
 23 said, quote:

24 "Whether or not there is room for 'marginal
 25 civil court review' under the narrow rubrics of

1 'fraud' or 'collusion' when church tribunals act
 2 in bad faith for secular reasons [sic], no
 3 'arbitrariness' exception -- in the sense of an
 4 inquiry whether the decisions of the highest
 5 ecclesiastical tribunal of a hierarchical church
 6 complied with church laws and regulations -- is
 7 consistent with the constitutional mandate that
 8 civil courts are bound to accept the decisions of
 9 the highest judicatories of a religious
 10 organization of hierarchical polity on matters of
 11 discipline, faith, internal organization, or
 12 ecclesiastical [sic], custom, or rule [sic]."

13 Essentially, that -- unquote. That's at
 14 page 713 of that case.

15 As a result, the Supreme Court eliminated
 16 the arbitrariness exception to the rule that civil
 17 courts are prohibited from adjudicating religious
 18 disputes. The Court has not revisited whether
 19 ecclesiastical -- whether civil courts can review
 20 ecclesiastical decisions for fraud or collusion, but
 21 they can't review them for arbitrariness. That's what
 22 the case says.

23 Since then, there has been further
 24 litigation about this issue before the various circuit
 25 -- federal Circuit Courts of Appeals and in many state

1 courts. A split of authority has developed with
 2 respect to state breach of contract and tort claims.
 3 Some courts have held that if an ecclesiastical issue
 4 underlies some of the claims, such a breach of
 5 contract claim, all of the claims should be dismissed,
 6 thereby precluding civil courts from exercising
 7 jurisdiction over any of those claims. Gaston versus
 8 Diocese of Allentown, 712 Atlantic Second. 757, which
 9 is, I believe, a Pennsylvania Supreme Court case from
 10 1998.

11 In that case, students at a Catholic school
 12 were expelled. The archdiocese and the -- were --
 13 were sued and the principal were sued in tort for
 14 negligence and intentional infliction of emotional
 15 distress. And the court dismissed the complaint on
 16 jurisdictional grounds, stating that the action was an
 17 attempt to involve civil courts in an ecclesiastical
 18 custom or rule, as upheld by the bishop of the Roman
 19 Catholic Church.

20 There are cases in which personnel decisions
 21 can be reviewed by civil courts and there are cases
 22 where an employment matter can be looked at as a
 23 secular matter. One of such cases is Scharon v. Saint
 24 Luke's Episcopal Presbyterian Hospitals, 929 Fed.
 25 Second 360 (8th Circuit 1991).

1 In this case, there are two counts in the
 2 amended -- in the third amended complaint which
 3 survived the motion to dismiss. The second count
 4 indicated that the defendants, Archdiocese and STS, in
 5 refusing to re-enroll the children were in breach of
 6 contract, it violated the handbook. And that count
 7 eight of the complaint indicated that they were
 8 wrongfully and improperly expelled in April 2017 in
 9 retaliation for the verified complaint, and in breach
 10 of contract, and that they also waived the provisions
 11 of the handbook.

12 The case law throughout the country seems to
 13 support the notion that Catholic high schools for the
 14 most part should be -- that their ecclesiastical
 15 decisions should be followed. Following -- and
 16 recently, the -- there is a Pennsylvania case,
 17 Chestnut Hill College v. Pennsylvania Human Relations
 18 Commission, 158 Atlantic Third 251, which is a
 19 decision made by the Commonwealth Court of Pennsylvania
 20 on April 7, 2017. In that case on page 259, the court
 21 stated as follows:

22 "Following Lemon versus Kurtzman, 403 U.S.
 23 602 (1971), this Court was persuaded that
 24 parochial high schools were an integral part of
 25 the Catholic mission, as 'a powerful vehicle for

1 transmitting the Catholic faith to the next
 2 generation.' In so doing, we emphasized that the
 3 religious" --

4 And in that case, they cited from Roman
 5 Catholic Archdiocese versus Pennsylvania Human
 6 Relations Commission, 548 Atlantic Second 328, which
 7 is also a Pennsylvania Commonwealth decision from
 8 1988. It went on to say that:

9 "In so doing, we emphasized that the
 10 religious character of the parochial school --
 11 schools based on" -- "they [sic] emphasized the
 12 religious character of parochial schools based on
 13 several factors. They [sic] noted non-Catholic
 14 students were required to take religious [sic]
 15 classes and to attend Catholic services as a
 16 condition of attending [sic]. We reasoned that
 17 'parochial schools constituted an integral part
 18 of the religious mission of the Catholic church
 19 and this process of inculcating religious
 20 doctrine, is, of course, enhanced by the
 21 impressionable age of the pupils, in primary
 22 schools particularly."

23 And in the Chestnut Hill case, the court
 24 indicated that the principles relating to Catholic
 25 high schools did not apply to colleges, but in drawing

the contrast between these two organizations, they -- the court said that, while there are material differences between parochial primary and secondary schools and college:

First, parochial schools educated children, not students who typically reach the age of majority, such which is the case with colleges.

Second, parochial schools were governed and operated by the Roman Catholic Archdiocese of Philadelphia, college is by one-fifth, plus one, comprised of the Sisters of Saint Joseph's.

Third, Catholic instruction was a required part of the curriculum at the parochial schools and attending Catholic classes and masses was a condition of attending the schools. College, by contrast, does not require attendance at religious services and religious instruction is available, but not required.

And the essence of the reasoning of that case and of other cases is that Catholic high schools, because they are unique in their mission, are of a religious nature.

The establishment clause of the First Amendment provides that Congress, quote, "shall make no law respecting an establishment of religion."

Pursuant to Lemon versus Kurtzman, 403 U.S.

602 (1971), the stated action must have -- must (1) have a secular purpose; (2) have a primary effect that neither advances nor inhibits religion; and (3) not foster excessive government entanglement with religion.

With respect to this third criterion, the determination of whether there is excessive entanglement with church and state is conducted through both substantive and procedural context.

Substantive entanglement -- McKelvey v. Pierce, 173 N.J. 26, 41 to 42 (2002). Subjective [sic] entanglement occurs when courts intrude into a church's freedom to select, discipline or terminate its ministers. Procedural entanglement occurs when the state and church are matched against each other in a protracted adversarial proceeding. Procedural entanglement recognizes a church's substantive freedoms and the impact of judicial intervention, including extensive oversight of church activities.

In her letter, Dr. Dames articulated that the re-enrollment decision was made for religious reasons. This Court does not have the authority to meddle in that decision, as it was based upon ecclesiastical considerations. Cardinal Tobin testified he was the ultimate decision-maker of the

1 non-re-enrollment decision. He made that decision
 2 because he felt it was necessary to restore the peace
 3 and tranquility of the school community, an
 4 ecclesiastical decision made for the benefit of
 5 achieving the school's mission.

6 In making this decision, he had the input of
 7 Dr. Dames and Reverend Nydegger. These trusted
 8 administrators consulted with him in making this
 9 decision for faith-based reasons. As discussed
 10 earlier, he explained his faith-based rationale at
 11 trial. On cross-examination, plaintiff's counsel
 12 asked Cardinal Tobin if he was aware of the sexual
 13 issues and the alleged harassment and bullying,
 14 harassment and -- and the harassment and intimidation
 15 of S.P. A number of these issues were resolved prior
 16 to Dr. Dames meeting with Cardinal Tobin, albeit not
 17 to Mr. Phillips' and Ms. Mullen's satisfaction.

18 If Cardinal Tobin did not make his decision
 19 on correct information, plaintiffs' remedy would be to
 20 go back to Cardinal Tobin as reflected in the
 21 handbook, J-3. Specifically, the handbook states on
 22 page 16 that with respect to an appeal to an expulsion
 23 decision, quote, "The written request must be made to
 24 the principal within five business days from the date
 25 of official communication by school administrators of

1 the disciplinary decision. Failure to request a
 2 hearing within these five business days forfeits the
 3 right to a hearing," unquote. And this is in the
 4 expulsion section of the handbook. This faith-based
 5 decision was made by church officials, and any appeal
 6 of that should have been made to church officials, not
 7 to this Court.

8 Plaintiff cites no case law which would
 9 allow this Court to interfere with the church's
 10 ecclesiastical mission. The Court knows there's no
 11 case law that would give this Court the authority to
 12 intrude upon such a decision because the ecclesiastical
 13 decision-maker did not know all the facts which
 14 plaintiff wanted the decision-maker to know.

15 The Court would be remiss if it did not
 16 emphasize that the plaintiffs' 2016 issues were
 17 resolved as to sexual misconduct and bullying, thus,
 18 plaintiffs' position, to the extent that it raises
 19 these issues time and again, seems to serve little
 20 purpose. While plaintiff and Ms. Mullen feel bullied
 21 and harassed by the reaction of the St. Theresa's
 22 community by posting the online petition, Facebook
 23 posts and the like, they ignore that they chose to air
 24 this matter out publicly. They now complain about the
 25 reaction it has caused.

Cardinal Tobin, Reverend Monsignor Nydegger, Dr. Dames, Principal Deacon Joe, and former principal Sister Helene testified credibly that their efforts were rooted in an effort to maintain peace and tranquility in the faith-based community. Dr. Dames wanted to stop this controversy on all sides, and on February 22nd she met with everyone, including Ms. Mullen, for that specific purpose. Plaintiff chose to pursue their grievances aggressively and in the most confrontational manner. The church officials' decision was based in attempting to restore its faith-based mission, the faith-based mission of its community. The Court does not have the jurisdiction to question these faith-based decisions.

This Court's view of this matter is supported by a number of out-of-state cases, various out-of-state cases. For example, in Calvary Christian Schools v. Huffstuttler, 367 Arkansas 117 (2006), a student was dis-enrolled from a religious school due to the actions of his parents. The Supreme Court of Arkansas held that the Court were without jurisdiction to rule on any of these claims arising out of this enrollment. Specifically, the Court found that this enrollment was due to the parents' failure to comply with Matthew 18 principles in the school's handbook.

The reasons included in the dis-enrollment letter reflected the school's ecclesiastical philosophy. The Court held that any and -- claims arising out of a dis-enrollment would therefore require the Court to determine whether the plaintiff -- the plaintiffs did or did not comply with Matthew 18. This Court dis -- therefore, the Court dismissed the claims for lack of jurisdiction. In this case, the decision was based upon following the educational system of Saint John Bosco, based upon reason, religion, and loving kindness, and on the philosophy imparted upon the Catholic-based community by Christ and Mary, and that is not a decision for this Court to make.

Likewise, in Gaston v. Diocese of Allentown, which was discussed earlier, 712 A.2d 757, Pennsylvania Superior Court 1998, a Catholic school expelled the plaintiff's son and daughter after the principal felt threatened during an interaction with the plaintiff's father regarding a curriculum dispute. The plaintiffs brought the claim intentional and negligent infliction of emotional distress. The Court held, quote, "The question here, however, is not a property or contractual dispute. It is a claim that hits a tort law but is based upon an expulsion decision. Ratified

1 by the Bishop, it is our opinion not receptive to
 2 application of neutral principles of law. The
 3 Catholics' disciplinary code and review of expulsion
 4 involves matter of church doctrine." Likewise, in
 5 this case, the expulsion decision involved matters of
 6 church doctrine.

7 Similarly, in In re St. Thomas High School,
 8 495 SW.3d 500, Texas Appellate Court 2016, a Texas
 9 appeals court ruled that the Court lacked jurisdiction
 10 to hear a case whether parents of a student's alleged
 11 sexual harassment against their son's teacher along
 12 with other highly charged, slanderous accusations
 13 after a dispute over a low grade. The school
 14 investigated and found the claims to be unfounded, and
 15 the parent later admitted they were unfounded.

16 As a result, the school expelled the child
 17 because it would have been impossible -- difficult if
 18 not impossible for the teachers to educate the student
 19 without fear of similar retribution by the parents.
 20 The parents then sued for breach of contract, specific
 21 performance and injunctive relief. The Court
 22 determined the decision was a result of a Catholic
 23 school's management of its internal affairs and held,
 24 quote, "If judicial resolution as a claim will
 25 interfere with a church's management of its internal

1 affairs or encroach upon the church's internal
 2 governance, the Court may not exercise jurisdiction
 3 over the claim."

4 It bears emphasizing in this case that the
 5 children in this case were expelled because -- not
 6 because of their conduct but because of the conduct of
 7 their parents, which interfered with the mission of
 8 the church, and this Court is not authorized under law
 9 to meddle in such activities.

10 In addition to the ecclesiastical reasons,
 11 which standing alone would be a sufficient basis for
 12 this Court to deny the request to rescind the non-re-
 13 enrollment, there are also secular reasons to do this.
 14 Either of these reasons on their own would be
 15 independent reasons to uphold the non-re-enrollment
 16 decision. Plaintiff seeks an order compelling the re-
 17 enrollment of S.P. and K.P. for the academic year
 18 commencing September 6, 2017.

19 In the third amended complaint, the factual
 20 basis for this request is made starting with paragraph
 21 88 of the amended complaint. The complaint reads as
 22 follows: 88. On or about January 2017, after this
 23 lawsuit was pending, plaintiffs were invited to return
 24 to STS and were given registration packets for the
 25 2017/2018 school year. On or about February 17, 2017,

1 and after the expulsion was rescinded, the Court ruled
2 that S.P. had the settled legal right to play
3 basketball.

4 On or about March 22, 2017, STS handed every
5 student another press release from defendant
6 Archdiocese regarding the instant lawsuit. This press
7 release -- in 91 -- this press release was also
8 published and remains on the Archdiocese website and
9 was done to intimidate, bully, harass, shame,
10 humiliate, and/or embarrass the plaintiffs and were
11 retaliatory.

12 92. Plaintiff, S.P. and K.P. registered for
13 the 2017/2018 school year. 93. The registration
14 application was rejected by STS by a letter dated
15 April 7th, 2017, and received by Scott Phillips on
16 April 11th, 2017, stating in pertinent part, quote,
17 "Your registration is being returned to you pursuant
18 to the letter which you received most recently by
19 certified mail," unquote.

20 94. The letter in question was sent by the
21 Archdiocese months after the lawsuit was pending, and
22 it refers to the mission statement in the STS handbook
23 and states in pertinent part, "Actions of -- and
24 events initiated by you over the past several months
25 have directly interfered with the fulfillment of the

1 mission, not only for St. Theresa's School, but also
2 for many of its administrative staff, students, and
3 parents," unquote. 95. No specific actions are
4 described. 96. The only actions taken by plaintiffs
5 were to file the instant lawsuit and amendments to
6 same.

7 97. These letters by the Archdiocese,
8 church, and/or STS, after the Court ruled that S.P.
9 would -- had settled legal rights to play basketball
10 and among other things after the Court ruled, that the
11 settled legal right arose under Title IX.

12 98. Defendant, Archdiocese, church, and/or
13 STS, by waiting months before sending this April
14 letter and by inviting K.P. and -- S.P. and K.P. to
15 return, waived its right to refuse admission to S.P.
16 and K.P. for the 2017/2018 year. This April letter
17 from the Archdiocese is another form of expulsion for
18 filing the instant lawsuit, which violates public
19 policy despite the fact that there is no mention of
20 expulsion in the letter.

21 In count two of the complaint, it is alleged
22 that the defendants Archdiocese and/or STS, in refusing
23 to properly address the issues raised by plaintiff and
24 by expelling S.P. and K.P., are in breach of contract
25 and/or in violation of the provisions of the STS

1 handbook and have acted in bad faith. That count asks
2 for specific performance, monetary sanctions, and
3 other relief.

4 Paragraph eight of the complaint indicates
5 that the Archdiocese and/or STS improperly expelled
6 S.P. and K.P. in -- (who was not a plaintiff in this
7 action at the time in February 2017), close
8 parentheses, and again, in April 2017, in retaliation
9 for filing the verified complaint and are in breach of
10 contract. Defendant also waived the provision in the
11 STS handbook, and this provision is against public
12 policy. And this count also seeks specific performance
13 and damages.

14 Plaintiffs' application essentially seeks an
15 injunction for specific performance of an agreement to
16 re-enroll the children. Equitable relief in the form
17 of a permanent injunction is an extraordinary remedy.
18 Quote, "Permanent injunction requires proof that the
19 applicant's legal right to such legal right has been
20 established and the injunction is necessary to prevent
21 a continuing irreparable harm," Verna v. Links at
22 Valleybrook Neighborhood Association, 371 NJ Super. 77,
23 89 (App. Div. 2004).

24 "Whether a permanent injunction should be
25 granted is within the sound discretion of the trial

1 court," Sheppard v. Township of Frankford, 261 NJ
2 Super. 5, 9 (App. Div. 1992). "Such relief, though,
3 must not be more extensive than is reasonably required
4 to protect the parties' interest in whose favors it is
5 issued," Verna v. Links, 371 NJ Super. at 89.

6 An injunction -- the circumstances in which
7 an injunction may be issued is discussed extensively
8 in Van Name v. Federal Deposit Insurance Corporation,
9 130 NJ Eq. 433 (Ch. Div. 1941). Although this case is
10 an old case, it sets out time-honored precepts which
11 have been followed by this Court and other courts of
12 equity. At pages 442 to 443, the Court lays out the
13 following principles.

14 An injunction is not granted as a matter of
15 right, but is -- its granting or refusal rests in the
16 sound discretion of the Court under the circumstances
17 and the facts of the particular case. It is a strong
18 arm of equity. There is no power the exercise of
19 which is more delicate, which requires greater
20 caution, deliberation, and sound discretion, and which
21 is more dangerous in a doubtful case than the issuing
22 of an injunction.

23 The remedy of an injunction is an
24 extraordinary one and may not be awarded to any suitor
25 unless and until his right to it is established by

1 clear and convincing testimony free of all reasonable
2 doubts. If the complain -- a complainant's asserted
3 right is doubtful or disputed, equity will move
4 cautiously before determining to grant remedy by
5 injunction.

6 In determining an application for a
7 permanent injunctive relief, the Court should be
8 guided by the following comprehensive list of factors,
9 and in this case some of these factors but not all of
10 them applied to this case. Those factors set forth in
11 the Sheppard case are, one, the character of the
12 interest to be protected; two, the relative adequacy
13 of the injunction to the plaintiff as compared to --
14 with other remedies; the unreasonable delay in
15 bringing the suit for any unrelated misconduct by
16 plaintiff by the comparison of the hardship to
17 plaintiff if release is denied and hardship to
18 defendant if relief is granted; six, the interests of
19 others, including the public; and seven, the
20 practicality of framing in order for judgment,
21 Sheppard, 261 NJ Super. at 10, reciting the
22 restatement of 27.

23 In this case, the plaintiff seeks, in
24 paragraphs two and eight, specific performan -- a
25 decree of specific performance of the -- of what they

1 perceive to be the right to re-enrollment. In the --
2 granting specific performance by a decree of
3 injunction is also addressed in Van Name v. FDIC, 130
4 NJ Eq. 433 at page 443. There, the Court says an
5 injunction to restrain a breach of contract often
6 operates as and affects all the purposes of a decree
7 for a specific performance. As a general rule, to
8 enjoin one from violating a contract is an indirect
9 method of enforcing its affirmative provisions. The
10 jurisdiction exercised in the substance is the same,
11 and the general rules apply in one case as the other.

12 Courts of equity will not interfere to
13 decree specific performance except in cases where it
14 would be strictly equitable to make such a decree.
15 The power of injunction committed to this Court is a
16 delicate and a most important power and should always
17 be exercised with caution, to prevent, not to do
18 mischief, to protect and sustain, not to render
19 enjoyment of property, of rights in property which are
20 uncertain.

21 Specific performance is a discretionary
22 remedy resting on equitable principles and requiring
23 the Court to appraise the respective conduct of
24 parties, Friendship Manor, Inc. v. Greiman, 244 NJ
25 Super. 104, 113 (App. Div. 1990), cert. denied 126 NJ

1 321 (1991). Thus, it is explained by the Supreme
 2 Court in Stehr v. Sawyer, 40 NJ 352, 357 (1963), that
 3 the party asking the aid of the Court must stand in
 4 conscientious relation to his adversary. His conduct
 5 in the matter must be fair, just, and equitable, not
 6 sharp or aiming at unfair advantage. The relief itself
 7 must not be harsh or oppressive. In short, it must be
 8 clear that the claim is an equitable one.

9 Here, the Court cannot ignore the conduct of
 10 the defendants. The defendants, as previously stated
 11 by the Court, decided to make -- take the most
 12 confrontational approach, an approach inconsistent
 13 with the goals and objectives of the -- a faith-based
 14 community. They made the affirmative choice to go to
 15 the press and to make this matter public. They made
 16 the affirmative choice to sue 80 -- more than 80
 17 individuals in a community that has approximately 80
 18 families.

19 And their actions are harsh and oppressive,
 20 and they are not entitled to specific performance.
 21 And there is no automatic right to specific
 22 performance. The -- a court must make a complete
 23 evaluation of the complaint, of the claims asserted,
 24 the defenses raised, the hardships imposed on the
 25 parties, the fairness and reasonableness of both

1 parties' conduct, and the availability of other
 2 remedies before determining whether to grant such
 3 relief, Marioni v. 94 Broadway, Inc., 374 NJ Super.
 4 588, 598 to 99 (App. Div. 2005), cert. denied 183 NJ
 5 591 (2005). And quoting from that case at that page,
 6 in general, to establish a right to the remedy of
 7 specific performance, a plaintiff must demonstrate
 8 that the contract is valid and enforceable at law and
 9 that an order compelling specific performance will not
 10 be harsh or oppressive.

11 In Cohen, Estate of Cohen ex rel. Perelman v.
 12 Booth Computers, 421 NJ Super. 134, 149 to 50, (App.
 13 Div.), cert. denied 208 NJ (2011), the Court stated,
 14 quote, "To establish a right of specific performance,
 15 the party seeking relief must demonstrate that the
 16 contract in question is valid and enforceable and that
 17 the terms of the contract are clear."

18 Here, there is no binding contract between
 19 the plaintiff and the defendants for the 2017/2018
 20 school year. Thus, because there is no contract,
 21 there is no legal contractual right to specifically
 22 enforce. Plaintiffs do not cite -- plaintiff does not
 23 cite any case which requires defendants to enter into
 24 a new contract for the 2017/2018 school year to educate
 25 S.P. and K.P. Defendants have refused to enroll S.P.

71

1 and K.P. for the next academic year starting September
 2 6. This Court cannot specifically enforce a contract,
 3 because there is no contract to enforce. Even if a
 4 contract could be found by a review of the 2016/2017
 5 student handbook, no enforceable right for re-
 6 enrollment could be developed based on that agreement
 7 under the facts of this case, and I will explore that
 8 next. It should be observed at the outset -- okay,
 9 that's fine. That's all I need.

10 THE CLERK: Okay.

11 THE COURT: It should be observed at the
 12 outset that the children were re-enrolled not because
 13 of the conduct -- of their conduct, but because of the
 14 conduct of their parents. There is no dispute that
 15 the children's behavior in any way caused the non-re-
 16 enrollment decision. An examination of the contract
 17 demonstrates that there are several provisions which
 18 give defendants the right not to re-enroll S.P. and
 19 K.P.

20 In analyzing this principle, the Court first
 21 turns to the fact that there is an acknowledgment and
 22 receipt of the parent student handbook by Mr. Phillips.
 23 In that acknowledge -- in that acknowledgment, Mr.
 24 Phillips acknowledged that the handbook is binding on
 25 students and parents during the current academic year.

72

1 Thus, the terms of this contract were binding on him
 2 and he agreed that that would be the case. He further
 3 signed the statement saying I understand my
 4 responsibility to support the school policies it has
 5 established.

6 Looking at the contract itself, the contract
 7 states -- the handbook states on page 14, "Actions
 8 that violate the law, threaten or cause harm to
 9 another student or staff, disrupt or impede the
 10 welfare and progress of the school community, or bring
 11 discredit to the school will not be tolerated."

12 Clearly, there was an agreement. Although
 13 it applied students, it certainly is a fair implication
 14 applied to parents that they would not disrupt or
 15 impede the welfare and progress of the school
 16 community and the publicity, which was started with
 17 Mr. Kernan, and which no one has -- no one in this
 18 case has testified in any way that the defendants did
 19 anything to encourage this publicity. Deacon Joe
 20 specifically testified they didn't, and the -- but
 21 those wheels were set in motion by the plaintiffs, and
 22 the plaintiffs also chose to appear publicly in
 23 various media outlets, making their children available
 24 for such interviews. And thus, at least in the minds
 25 of the school community -- and it's in letters, it's

1 in the petition which the plaintiff put in evidence,
 2 and in other documents, that this generated a concern
 3 on the parents' behalf that it was interfering with
 4 the school's mission and it was disrupting the school.

5 The further disruption of -- which caused
 6 further controversy is suing 80 individuals in the
 7 school community also. While it's -- certainly, an
 8 individual has the right to sue, lawsuits can have
 9 consequences, and there is no case law that says that
 10 I -- that this Court knows of that seeking damages
 11 from 80 individuals in the school community would not
 12 -- could not result in some kind of reaction to that
 13 if it creates an uproar in that community.

14 The handbook goes on to say on page 14, "If
 15 a student's behavior is generally disruptive or -- and
 16 uncooperative, it will be necessary to ask the parents
 17 to choose another school for the child. We cannot
 18 sacrifice the education of the whole class because of
 19 the disruptive behavior of one student. And the same
 20 would apply as to the disruptive behavior of parents.

21 Now, in this case there is a continuum of
 22 conduct with meetings with various school individuals,
 23 Sister Helene, Deacon Joe and others where they were
 24 shaken by the aggressive conduct of the plaintiffs.
 25 So there were actions far beyond just the publicity

1 that caused this. And one only need to look at the
 2 letters written by Ms. Mullen which threatened time
 3 and time again that if she didn't get her way, that
 4 there would be consequences. And those -- the tone of
 5 those letters, as well as the tone of Mr. Phillips'
 6 meeting with Sister Helene when he was very
 7 confrontational with her, was to control the
 8 situation.

9 One has to wonder why it was so important
 10 for an eighth grader to be valedictorian of the class
 11 that you would upset several people in the school
 12 community over this issue. And while it was all
 13 framed in terms of giving closure to B.P. that's
 14 disingenuous. It's just plainly disingenuous, all of
 15 which has to weigh in the decision.

16 And what's most important of all is that, if
 17 you turn to the statements of Cardinal Tobin, what he
 18 was ultimately concerned about -- and he was the
 19 ultimate decision-maker -- he was concerned about the
 20 peace and tranquility of the community being upset,
 21 and he had to make a difficult decision, one family
 22 which was disrupting the community versus the welfare
 23 of the entire community. And this Court is not --
 24 even on a secular basis, that is a matter within the
 25 discretion of the school.

1 There are other provisions in the handbook
 2 that likewise apply. The handbook goes on, on page 14,
 3 to say, "It is expected that the judgment of school
 4 authorities concerning the discipline of the students
 5 will be respected and supported by parents and
 6 guardians." The decisions of this school were not
 7 respected by parents and guardians. In fact, rather,
 8 they were met with letters threatening consequences if
 9 the decisions weren't changed. It wasn't enough to
 10 discuss them, and there were many times when a
 11 discussion led to a change, but if the discussion
 12 turned out the way that these plaintiff -- that Mr.
 13 Phillips or Ms. Mullen didn't like, then the
 14 individuals who made those decisions were threatened.

15 The handbook goes on to say, quote, on page
 16 14 -- I'm quoting this -- "If conflict arises, parents
 17 and guardians are expected to discuss the problem
 18 privately, and those concerned, and not in front of
 19 students or other parents or guardians." Here, it was
 20 more than just private. There was an airing out of
 21 this matter in the press and making very public, which
 22 was contrary to the faith-based purpose of this school
 23 educating Catholic youth.

24 Turning to page 16 of the handbook, with
 25 reference to expulsion, the handbook says, "Expulsion

1 is a permanent removal of the student from school.
 2 However, if in the sole determination of the school a
 3 student's conduct or activity reflects such grave
 4 discredit on the school or otherwise presents a
 5 definite impediment to the welfare and progress of the
 6 school community, the student may be expelled without
 7 the school's having taken prior disciplinary measures."

8 In this case, while the actions weren't by
 9 the student, those concepts apply equally to the
 10 parents, and these parents -- these issues were so
 11 grave in the judgment of the school, in the judgment
 12 of Reverend Monsignor Nydegger, Dr. Dames, Sister
 13 Helene, Deacon Joe, and ultimately the Cardinal, that
 14 they had to take steps. And, as I indicated earlier,
 15 there was an appellate mechanism in the handbook. So
 16 from a procedural basis, the plaintiffs waived that
 17 process and did not exhaust the remedies.

18 Because in that paragraph, it says, quote,
 19 "A written request must be made to the principal within
 20 five business days from the date of official
 21 communication by the school administrators of the
 22 disciplinary decision. Failure to request a hearing
 23 within these five business days forfeits the right to
 24 a hearing." So, and that is in the expulsion
 25 paragraph. So they forfeited their right to a hearing

77

1 under the terms of the contract which the plaintiffs
2 want to enforce. So even if that is a contract, they
3 don't have any contractual rights. And even if they
4 do have the rights, they have violated numerous
5 portions of the contract.

6 The contract also indicates at the very
7 beginning in the purpose and use of this handbook,
8 states specifically, "The principal has discretion to
9 take actions other than those specified in the
10 handbook." So the principal would have the power to
11 recommend expulsion based on the conduct of the
12 parents because this -- the handbook itself is --
13 provides him with such discretion. So when viewed
14 from a contractual perspective, just looking at the
15 very terms of the contract itself, there is a
16 contractual basis for the non-re-enrollment, if one
17 was required.

18 The plaintiff has taken the position that
19 there was a pretext, there was a smokescreen, that the
20 -- this decision was made because of basketball,
21 because of bullying and harassment and intimidation of
22 the plaintiffs and the children and Ms. Mullen, and
23 this Court is persuaded, and I can't emphasize this
24 enough, that the decision to not re-enroll the
25 children has nothing at all to do with basketball. It

78

1 is plainly not related. And I'll give that reason in
2 a moment.

3 But in order to get to that decision, I need
4 to break down the events in this case into various
5 phases, because I think by looking at the phases one by
6 one it allows better analysis of the circumstances.
7 The first phase is the phase prior to any controversy
8 regarding basketball, and in that phase there were
9 issues about the alleged inappropriate sexual behavior
10 which was addressed, the substitute teacher that was
11 addressed, the issue with a gun which was addressed,
12 and the valedictorian issue, which was addressed but
13 not to the satisfaction of the plaintiffs.

14 But everything doesn't have to be to the
15 plaintiffs' satisfaction. Somehow there's a
16 suggestion if it's not the plaintiffs' way, it's not
17 the right way. And that's not the way any institution
18 has to operate. The second phase is the basketball
19 phase. The -- in the basketball phase the action was
20 taken by Mr. Donovan as commissioner, and there is no
21 doubt that there was a certification filed, which was
22 wrong. It was false. But that did not have a bearing
23 on this hearing. I don't -- and there should not be
24 confusion between the two.

25 I don't know why Mr. Donovan gave false

1 testimony. That's not an issue in this case. He did
 2 give false testimony, and this Court took action
 3 because of it and change -- as the Court originally
 4 would not allow S.P. to play basketball, when it got
 5 the correct information, this Court allowed her to
 6 play basketball. So that problem was remedied. But
 7 then in that time, this Court -- Mr. Phillips made the
 8 decision that he had an interesting human interest
 9 story and he wanted his side to get out publicly. To
 10 this -- at this time, I still don't understand why he
 11 had to get it out publicly. He didn't even tell the
 12 Court why it had to be gotten out publicly in a news
 13 story.

14 This Court can certainly say that its
 15 decision would not be affected by the press, because
 16 this Court only makes decisions based what -- on
 17 what's presented to it in this courtroom. And when it
 18 was told -- when this Court learned in this courtroom
 19 that there were other girls playing on boys' teams,
 20 this Court didn't need to know anymore and was able to
 21 make its own independent decision with the facts. And
 22 that's how this Court's supposed to decide cases, on
 23 the facts that occur in this courtroom.

24 So the Court has not had it explained to it
 25 why this had to be aired out publicly. And given the

1 nature of the various letters that were written by Ms.
 2 Mullen threatening the school, it at least seems that
 3 the argument that the public attention was done for
 4 leverage, because there has been no other applic --
 5 explanation. But if you link those letters or the
 6 publicity, it leads to an inescapable conclusion.

7 The next phase was the expulsion and
 8 reinstatement. The expulsion letter came out on
 9 February 1. The Appellate Division ordered the re-
 10 enrollment of the children, I think it was on February
 11 2. It may have been the first. A press release was
 12 issued by the Archdiocese on that day, saying that
 13 they had the right to expel under the terms of the
 14 handbook for bringing litigation. Ultimately, that
 15 issue was sent back to this Court.

16 But what is significant is even while the
 17 basketball issue was pending before this Court,
 18 regardless of how it was decided, Cardinal Tobin
 19 ordered the children be re-enrolled in the school. So
 20 it had nothing to do with basketball, because if
 21 Cardinal Tobin was concerned that the pending motion
 22 about basketball was going to be decided, he wouldn't
 23 have re-enrolled the children. So it totally escapes
 24 the Court and defies the Court's imagination how, in
 25 the slightest way, the decisions that were made by

81

1 Cardinal Tobin could have been related to the
2 basketball. In fact, he did the opposite. When he
3 found out that there were girls playing on a boys'
4 team, he said, "I don't want the league games
5 forfeited." So that argument is just not supported by
6 the record.

7 So then, when the children returned to
8 school -- and this is probably the most significant
9 phase to me -- there was an immediate uproar at the
10 school. There were Facebook posts, there was the
11 online petition. There was a fair amount of discord
12 and upset in the school community because of all of
13 what individuals in the school viewed as negative
14 publicity.

15 This Court would be the first to acknowledge
16 that not everyone joined in the sentiments of those
17 individuals who felt that the Phillips family went too
18 far. There were families who supported the family,
19 and there was a witness before this Court, although I
20 didn't accept his testimony, was clearly supportive of
21 the family. And I accept the fact that there were
22 families that supported the Phillips family. Ms.
23 Mullen testified about those families, and that does
24 strike the Court as being believable.

25 But the one inescapable conclusion for the

82

1 Court is that this was a very polarizing event. And
2 the polarizing event became worse when 80 individuals
3 in the school community were sued. But that didn't
4 happen -- the context in which that happened is very
5 important. When the children returned to school, the
6 Court, two days after Cardinal Tobin made the decision
7 on the 15th to avoid this Court making any decision on
8 the -- on whether the expulsion could stand or not, he
9 said -- essentially said to this Court, "You don't
10 have to bother. I'm going to let them stay this
11 year." This Court then, on the 17th, two days later,
12 made the decision to let S.P. play basketball on the
13 boys' team.

14 Dr. Dames -- and this is the most significant
15 event to me, most significant of all -- Dr. Dames
16 scheduled a series of listening sessions with STS
17 parents on February 22. Those listening sessions were
18 scheduled for five days after this Court made its
19 decision on the basketball. Now let's look at what
20 Dr. Dames wanted to do with those listening sessions.
21 Did she want to kick the Phillips family out? No.
22 She wanted to do the opposite. She wanted everyone in
23 the community to stop attacking each other. She
24 specifically told -- five days after the basketball
25 decision, she told parents, "Don't post on the online

83

petition." Teachers were forbidden from posting on it. She told parents, "Don't make the Facebook posts."

So the idea that this had anything to do with basketball is derailed by the very conduct that was taken. At those meetings, and Ms. Mullen attended the first meeting, Dr. Dames said, let's move on, let's move back to peace and harmony and tranquility. Let's make this the same faith-based community that's made this a wonderful place for all the children. Let's make it, continue -- these are my words, not hers. But let's continue to make it this wonderful community that the children can enjoy and thrive in and get the benefit of the faith-based mission that we have.

So what happens the next day? What happens the very next day? The very next day, Ms. Mullen hand-delivers to the Cardinal a letter saying, if you don't meet with me in six days, I'm going to sue the -- I'm going to sue everybody. So you've got six days, Cardinal. Now, you know, not taking into consideration how busy his schedule is and the responsibilities that he has for somewhere in the neighborhood of 1.3 to 1.6 million Catholic lives. To demand that the Cardinal meet with her in six days or it -- or a lawsuit would be filed is relevant to the Court in the sense that it is a reflection of an overly aggressive approach where

84

a family has a range of alternatives to solve a problem and they choose, of all the range of alternatives, the most controversial, the most incendiary alternative.

Now, I'm mindful of the fact that the Cardinal did not get that letter, did not see that letter. But it bespeaks an intent and a purpose by the -- by Mr. Phillips and Ms. Mullen. And this case is all about stopping that intent and purpose. Then, six days later, the lawsuit was filed, on March 1, as promised. 80 -- more than 80 individuals in the community were sued in this very small community, creating a further uproar.

At that point, Reverend Monsignor Nydegger, who doesn't function in this area, he doesn't oversee the schools, he's got a lot more responsibility, starts paying attention to this and comes to the conclusion that this is a threat to the mission of the community, and that's one of his central purposes as vicar general and -- and I might get this wrong because I'm doing it from memory -- keeper of the curiae. But he's got this religious mission that he's trying to make certain will be honored by the community. And for that reason, for those faith-based reasons he testified about why he got involved. Dr.

85

1 Dames was likewise motivated by that, and certainly
 2 the Cardinal's testimony cannot be refuted, that that
 3 is -- that he felt he had to react.

4 But the point is that if they wanted to do
 5 it for these reasons, the Cardinal wouldn't have
 6 reinstated and Dr. Dames wouldn't hold the meeting to
 7 calm everyone down to get to the sense of community.
 8 But essentially, what the Phillips family did by
 9 writing a letter the next day and suing a few days
 10 letter is saying, "We're not interested in calming
 11 things down. We're going to keep the controversy
 12 going." So, and I think the tone is what's important
 13 to look at. Not the substance, the tone.

14 Now, there has been discussions during this
 15 case that the plaintiff has taken the position that
 16 the expulsion letter, which was written by -- or the
 17 non-re-enrollment letter, which was written by Dr.
 18 Dames, is not proper because the Archdiocese does not
 19 have standing. The testimony of Monsignor Nydegger,
 20 of Dr. Dames about ACES, about the nature of the
 21 agreement between the Archdiocese and how they oversee
 22 the community of -- does this individual need some
 23 water? Ask him if he needs some water.

24 UNIDENTIFIED SPEAKER: Oh. Oh, no. Thank
 25 you, sir. Sorry, Your Honor.

86

1 THE COURT: you want to get him some water?
 2 Somebody get him some water. You --

3 Anyway, so the ACES agreement gives
 4 authority to the Archdiocese, the courts consider.
 5 But even if ACES doesn't, there's a superintendent of
 6 schools, there's a structure, it's a de facto
 7 structure. To say that that's not the structure is to
 8 defy reality.

9 But in an abundance of caution, this Court
 10 had that letter written by the -- asked that a letter
 11 be written by the school to verify that this had the
 12 school's endorsement, and such a letter was written.
 13 I've gotten and I received an objection to allow that
 14 change many times in this case, and I indulged the
 15 plaintiffs on a number of issues so that I could get
 16 to the substance of this case and I'd get to the
 17 merits.

18 Certainly, I overlooked the -- on a few
 19 occasions their non-cooperation in depositions. I
 20 allowed the initial order to show cause to be amended
 21 without the necessity of further papers, and did other
 22 things to accommodate the plaintiffs. And so I've
 23 been criticized for giving the same consideration to
 24 the defendants, but I always tried as best I could to
 25 be fair to everybody, and I've said that several times.

87

1 MR. WESTRICK: Judge, would it be possible to
2 take five minutes before we continue?

3 THE COURT: Yeah, we can. I'm not that far
4 from being finished --

5 MR. WESTRICK: Okay.

6 THE COURT: -- but we can take five minutes.

7 MR. WESTRICK: Thank you very much.

8 THE COURT: That's fine. Okay, I'll be back
9 in five minutes and I'll --

10 MR. WESTRICK: Thank you, Judge.

11 THE COURT: -- I'll wrap up then.

12 (Off the record from 4:32 p.m. to 4:43 p.m.)

13 COURT OFFICER: Okay, everyone can be seated.

14 THE COURT: So we're back on the record in
15 Phillips v. Archdiocese of Newark, C-248-16. And I'll
16 hopefully now finish my opinion. And I only have a
17 court reporter until six o'clock, so I need to try to
18 get this done. So I think that the principal last
19 remaining issue is the issue of due process.

20 In Hernandez v. Don Bosco Preparatory School,
21 322 NJ Super. 1 (App. Div. 1999), plaintiff was a
22 student at Don Bosco Preparatory High School, a private
23 Catholic boys' school in Ramsey. The student was
24 expelled for alleged misconduct which violated the --
25 the student was expelled for alleged misconduct which

88

1 violated the student-parent handbook while the
2 plaintiff was on disciplinary probation. The
3 misconduct included vandalism of a teacher's home,
4 slashing of a teacher's tires, making prank calls to a
5 teacher, allegedly selling illegal steroids, and
6 allegedly urinating in a student's locker.

7 The plaintiff, who was the student, and his
8 parents met with the Don Bosco administration to
9 discuss these incidents. Thereafter, the Don Bosco
10 disciplinary committee convened to review the matter
11 and agreed that the student should be dismissed after
12 seeking an appeal. The Don Bosco representatives met
13 again and plaintiff was asked to withdraw, and a letter
14 was written to that effect.

15 In Don Bosco, the Court established a two-
16 prong fundamental fairness test which private high
17 schools must follow when expelling students for
18 misconduct. One, the private high school must adhere
19 to its own established procedures for dismissal, and
20 two, in executing the dismissal, the school must follow
21 a procedure that is fundamentally fair, Don Bosco, 322
22 NJ at 31 to 21.

23 In Don Bosco, the procedure that was followed
24 was a series of various meetings with the student and
25 the administration, and then a committee meeting of

89

1 various representatives of the school and then with the
 2 appeal, a further meeting of that committee. There was
 3 not a trial-type hearing where witnesses testified, and
 4 that kind of hearing, which is akin to the kind of
 5 process in this case, was found to be proper and to be
 6 a proper hearing, and it was also found to be
 7 fundamentally fair, as I indicated earlier.

8 The parents aren't entitled to a hearing
 9 under the student handbook. There is nothing in the
 10 handbook that entitles the parents to a hearing for
 11 their conduct. And certainly, there are cases, both in
 12 the ecclesiastical decisions, and I'll deal with a
 13 secular decision in a moment, which -- fourth court,
 14 fourth state -- which says that the parents -- the
 15 expulsion based on parent conduct is not reviewable,
 16 and doesn't require -- essentially, require due
 17 process.

18 But even assuming that due process was
 19 required, there was certainly a fair hearing of the
 20 Phillips family grievances. I've gone through all
 21 those various meetings with Deacon Joe, Sister Helene,
 22 Dr. Dames, Sister Butler. They were able to talk to
 23 people at all levels. The -- there was a further
 24 meeting, and I realize others attended the meeting, but
 25 there was a meeting that Ms. Mullen attended where Dr.

90

1 Dames asked everyone to restore the community to peace
 2 and tranquility, and in effect that request was
 3 ignored.

4 And I think it's important, and probably the
 5 most important part of this, what Dr. Dames said is
 6 that the subsequent filing of the litigation showed
 7 that with respect to the continuum of conduct that the
 8 Court has addressed in its opinion, that it wasn't
 9 going to change. And since it wasn't going to change,
 10 the decision had to be made for the benefit of the
 11 entire community. And this decision had nothing to do
 12 with the children. It was all because of the parents.

13 So, essentially, Dr. Dames' efforts to
 14 restore peace and tranquility in the community fell on
 15 deaf ears. You know, Dr. Dames was concerned that the
 16 spiritual aspects of the community were being
 17 destroyed. And she wanted everyone, not just the
 18 plaintiff -- Mr. Phillips and Ms. Mullen, but everyone in
 19 the community, to stop.

20 And in terms of fundamental fairness,
 21 everything has been heard. But assuming that for the
 22 sake of argument due process was not totally followed,
 23 there was an appellate mechanism in the handbook, and
 24 that remedy was not exhausted prior to coming to this
 25 Court, so that any procedural right which the plaintiff

1 may have had was waived. They had five days to do it,
2 they decided instead to come here.

3 In -- now, in the Don Bosco case, starting on
4 page 14, the Court said Don Bosco was clearly acting as
5 a private organization, not as a state agency. On page
6 18, it went on to state a private primary or secondary
7 school is generally considered a private association
8 rather than the function of the state. The procedural
9 rights inherent in membership with private association
10 and the termination of membership are substantially
11 less than those of a public school or public university
12 student. Membership in private organization attaches
13 somewhat different rights than, quote, "membership,"
14 unquote, in a private university.

15 The quote went on to say that membership in a
16 private organization receives the least procedural
17 protection in our judiciary. Under all of these
18 circumstances, the Court finds that the manner in which
19 the Phillips grievances were addressed time and again
20 are fundamnet -- were fundamentally fair, and there was
21 an effort always to ameliorate their concerns, even up
22 to February 22nd, which was rejected -- which effort
23 was rejected the very next day. And even though it may
24 have been in a meeting with others, it was rejected.

25 In Allen versus Casper, 87 Ohio App.3d 338,

1 62 NE 367, Appellate District of Ohio (1993), an
2 appeals court in Ohio affirmed the grant of summary
3 judgment dismissing a parent's action against a private
4 elementary school and officials because the school
5 officials did not violate the parent's contractual
6 rights and acted within its discretion when they
7 expelled a child midyear -- oh, actually, children
8 midyear based on the parent's failure to comply with
9 the terms of the handbook.

10 In Allen, the plaintiff's daughter complained
11 of classmate's inappropriate behavior and conduct. The
12 alleged improper behavior involved male classmate
13 inappropriately touching plaintiff's daughter and a
14 student with dental malformation inadvertently spraying
15 saliva on plaintiff's daughter. Plaintiff's mother,
16 after contacting school administrators, was
17 dissatisfied with the private school's internal
18 handling of these incidents. Plaintiff became angry
19 and called school administrators, quote, "un-Christian,
20 and accused them of working with the devil," unquote.
21 And that's -- during a meeting with the school
22 administrator, the pastor and the plaintiff, the mother
23 conceded that she insulted the administrator. As a
24 result of the foregoing, the school administrator
25 determined that the parties could no longer develop a

1 working relationship with plaintiff's family, and
2 plaintiff was asked to remove the children from school.

3 In affirming the trial court's grant of
4 summary judgment, the Appellate Court ruled that the
5 relationship between the plaintiff and the defendant
6 private Catholic school and its administrators was a
7 contractual relationship pursuant to the school's
8 handbook and policies, and that those express terms may
9 govern the circumstances under which a student may be
10 expelled. The Court opined, quote, "because contracts
11 for private education have unique qualities, they are
12 to be construed in a manner which leaves school board
13 broad discretion to meet its educational and doctrinal
14 responsibilities. Absent a clear abuse of discretion
15 by the school and the enforcement of its policies and
16 regulations, courts will not interfere with these
17 matters."

18 And the Allen case bears substantial
19 similarity to this case. It would bear noting in this
20 case that when Reverend Monsignor Nydegger was about to
21 make his recommendation to the Cardinal, he spoke to
22 Deacon Joe, he spoke to Reverend Joe, he spoke to Dr.
23 Dames, and by speaking to all of these people, he was
24 convinced that the school's ecclesiastical mission had
25 been upset and that it had to be remedied. And

1 ultimately, when he and Dr. Dames went to the Cardinal,
2 each and every event doesn't need to be known to the
3 Cardinal.

4 What was known to the Cardinal was that he
5 extended his, as he put it, his mercy to this
6 situation. And as he said, he was astonished that it
7 resulted in the reaction of the plaintiffs. That's
8 what he really needed to know. And that reaction to
9 the Cardinal was within a period of two weeks from the
10 time he did it. There was no effort to be conciliatory
11 in that time period, there was only an effort to be
12 incendiary. There was an effort -- there was a letter
13 written on the -- the decision was made on the 23rd.

14 A week later, on the -- I mean on the 15th.
15 A week later, on February 22nd, Dr. Dames had her
16 meeting, and then one day later, eight days from the
17 time the Cardinal extended his mercy, rather than
18 trying to find a way to be conciliatory, a threat of a
19 lawsuit was made, and -- even though he didn't know a
20 letter was written to him threatening that lawsuit, and
21 it was ultimately filed.

22 And it's really -- and in terms of his --
23 this is -- he didn't know about that letter. So -- but
24 what he did know is he did know about the lawsuit being
25 filed two weeks after his decision was made, and he was

1 truly disturbed that the peace and tranquility of the
 2 community was being upset so -- and these are my words,
 3 not his, but -- so soon after he made his decision.
 4 And the position that he would need to know more under
 5 these circumstances, when this circumstance was created
 6 by Mr. Phillips and Ms. Mullen, rings hollow.

7 An issue was raised with respect to a waiver
 8 of the right to not -- of -- by the plaintiffs not to
 9 re-enroll the children. And factually, that waiver
 10 argument has no merit. The application for re-
 11 enrollment was sent out in January. The application --
 12 after the application was sent out, Cardinal Tobin
 13 allowed the children to be re-enrolled.

14 But what also happened after that application
 15 was sent out is that there were actions taken by the
 16 publicizing of this case, at least according to what
 17 the state of mind is of the Archdiocese
 18 representatives, and there were actions taken with the
 19 lawsuit, but -- and other action, and that the upset of
 20 the community was intensified long after the
 21 application was sent to the plaintiffs. So the facts
 22 had changed since the offer was extended. And when the
 23 re-enrollment application came to the attention of the
 24 defendants' representatives under the circumstances
 25 that existed then, they declined to accept that

1 application. There -- so there was no waiver by
 2 sending out the application, because it was sent out
 3 before all these activities.

4 Now, there are some other equitable
 5 considerations which the Court would like to touch on
 6 briefly. First of all, even if there was a legal right
 7 to success on the merits, which, by the way, as I said
 8 earlier, would have to be established both under the
 9 law of specific performance as well as under the law of
 10 injunctive relief by clear and convincing evidence, and
 11 the -- that the existence of a contractual right can't
 12 be sustained by a preponderance of the evidence, no
 13 less the clear and convincing evidence standard. But
 14 there are also other bases on which an injunction would
 15 not be appropriate.

16 It is axiomatic -- quote, "It is axiomatic
 17 that injunctive relief should not be entered except
 18 when necessary to prevent substantial, immediate, and
 19 irreparable harm," unquote, Garden State Equality v.
 20 Dow, 433 NJ Super. 347, 351 (Law Division 2013), aff'd
 21 216 NJ 214 (2013). It is -- in the Don Bosco case, the
 22 Court indicated that a student removed from a private
 23 high school had immediate access to public schools for
 24 education, thereby in effect mitigating any irreparable
 25 harm, 322 NJ Super. at 614. The Court would note that

1 beyond just having the availability of public
2 education, to the extent that religion is important,
3 CCD and other religious outlets are available, so there
4 are ways to avoid any irreparable harm in this case.

5 In terms of balancing the equities in this
6 case, because that's one of the things the Court should
7 also look at, the comparison of the hardship to
8 plaintiff if relief is denied and hardship to the
9 defendant if relief is granted, the Court is mindful of
10 the fact that St. Theresa's is the only school the
11 children have known. The Court is troubled that it is
12 put in the position where the children, according to
13 Mr. Phillips -- and I accept this part of his testimony
14 -- would be heartbroken that they could not participate
15 in the only school community that they've ever known.

16 But I have to weigh against that the
17 disruption and the fracture of the community. And when
18 I look at this from just a practical perspective, in
19 essence, the administration was on edge because of all
20 of these events. The students were on edge. The
21 parents were on edge. If I allow the children to go
22 back, it is only going to continue to upset the peace
23 and harmony in this community.

24 And I also bear in mind that if the children
25 prefer not to go to public school, and I recognize this

1 is the last year of S.P.'s education at the school and
2 she's got her dance and her trip to Hershey Park and
3 all these events that she's been so looking forward to
4 for a period of time, that she may go to a different
5 Catholic school if she could, which would offer the
6 same kind of activities. And, you know, she, from
7 everything that I've been told during this case, she
8 has adjusted to what's happened in this case, and I
9 would hope she would be able to adjust elsewhere, as
10 would K.P. So that's an issue to me.

11 One of the other issues I have to look at is
12 whether an injunction would be adequate. And in terms
13 of the adequacy of the injunction, the Court is
14 concerned about what's called the continuing
15 superintendents doctrine. It's a doctrine that applies
16 in specific performance cases, and essentially what
17 that doctrine states is specific performance of a
18 contract will not be awarded, quote, "where the
19 execution of its decree for specific performance would
20 entail continuing and constant superintendence over a
21 considerable period of time," period, unquote,
22 Fleischer v. James Drug Stores, 1 NJ 139, 149 (1948).

23 How that's relevant in this case is the
24 following. I have served on the bench for a
25 considerable period of time. This is the single most

99

1 contentious case in which I have ever been involved. I
 2 have had more applications in this case than any other
 3 case I've been involved. And before here, I sat in the
 4 Family Division, which is known for contentious
 5 litigation, because it has such a profound effect on
 6 people's lives. But this too has a profound effect on
 7 children's lives, and it's something that I've always
 8 taken very seriously about this case.

9 Before the trial in this case, there were
 10 five applications for a stay of the Appellate Division.
 11 Or there were three that were actually made, five that
 12 were requested. There have been other applications of
 13 the Appellate Division in this case. I've had numerous
 14 applications. I have taken phone call after phone call
 15 after phone call in this case, during vacations of both
 16 counsel, and there always seems to be a sense of
 17 urgency about this case. There is nothing that leads
 18 this Court to believe that that, for lack of a better
 19 word, hysteria is going to end once -- if I sent the
 20 children back. And I cannot -- this Court cannot be in
 21 the position where it has to continually supervise what
 22 goes on.

23 The brief filed by the plaintiff -- I
 24 unfortunately brought all my papers back in chambers --
 25 you know, characterized the defendants' conduct as

100

1 deplorable. You know, I believe the word "shameful"
 2 was used. There were a number of incendiary words
 3 used. I don't have any confidence that if I sent the
 4 children back that the contentious litigation would
 5 end. So -- and it would be very difficult, and this
 6 also is in accordance with what's -- one of the things
 7 I have to decide -- would be very difficult for this
 8 Court to fashion an order that would prevent it.

9 So, for all of the reasons that I've just
 10 gone through, I am going to deny the application for
 11 re-enrollment. To -- stop. Let me rephrase that. I
 12 am going to deny the application to restrain the re-
 13 enrollment decision, and I'm going to allow the non-re-
 14 enrollments decision to stand. So I will enter an
 15 order to that effect. My law clerk is out today but
 16 I'll get that order out quickly. I'll have to get
 17 somebody to help me with it tomorrow. Okay. With
 18 that, the record's -- anything else, counsel?

19 MR. WESTRICK: No, Your Honor.

20 THE COURT: Okay. With that, the record's
 21 now closed.

22 MR. WESTRICK: Thank you.

23 MS. McCREA: Thank you.

24 (Trial concluded at 5:12 p.m.)
 25

101

CERTIFICATION

I, TERRY L. DeMARCO, the assigned transcriber, do hereby certify the foregoing transcript of proceedings from pages 1 through 56, line 19, on CourtSmart, Index No. from 1:51:18 to 3:30:07, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

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102

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